



# HR in the East Midlands

June 2021

This bulletin provides a round-up of all the workforce developments during June. With employee wellbeing a priority, we hope you will assist by completing the regional absence survey which many of you use for benchmarking. Darren Newman's article explains the recent EAT ruling on gender critical beliefs as being protected beliefs. Darren's explanation will no doubt be useful and we're sure that like us, you will also be comforted that "basic common sense" should prevail!

## Virtual Recruitment Assessment Centre

In previous years, EMC has helped a county council by designing and delivering an assessment centre to select people to join their graduate development programme. Last year EMC successfully adapted the process for the online/virtual environment.

Following this success, EMC were asked to help again and we recently designed and delivered a virtual assessment centre for this year's intake to the Council's graduate programme. The assessment centre ran over 2 days and assessed 35 candidates through a range of activities using MSTeams. Feedback from the council has again been extremely positive and the virtual environment is likely to be their preference in future. For more information about how EMC can help with face to face and virtual recruitment and selection, contact Lisa or Sam at [Lisa.Butterfill@emcouncils.gov.uk](mailto:Lisa.Butterfill@emcouncils.gov.uk) or [sam.maher@emcouncils.gov.uk](mailto:sam.maher@emcouncils.gov.uk)

## Sickness Absence Survey - 2020-21

Each year, EMC benchmarks sickness absence levels across the region and many councils ask us for this information. We would therefore be grateful if you could complete this year's survey.

To make it easier to respond, we are using an on-line form which you can access [here](#). It is quick to complete, with just a small number of questions.

**Please respond by 23<sup>rd</sup> July** so that results can be shared in next month's HR Bulletin. With thanks in advance for your help!

## Reminder - Trade Union Facility Time/Cost Reporting

Just a reminder that the deadline to report trade union facility time/costs is 31<sup>st</sup> July 2021. (It was moved to September last year due to COVID.) The service for inputting data is now open and the link to the Government's webpage is [here](#)

## Projects with Local Authorities

In June we have supported councils with: -

- Management team development
- Recruitment Support for a Member Appointment Panel
- Disciplinary investigation

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

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# Learning & Development

## East Midlands Virtual Challenge 2021

We're delighted to announce the new East Midlands Virtual Challenge, this will take place on 10 November 2021. In this virtual environment we're making 12 team places available.



The challenge is an all-day, non-stop, high intensity virtual 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.

### What you need to know about the virtual format

Every person taking part in the challenge (both delegates and role players) do so from home, or wherever they locate themselves during working hours. All communication between the teams and the people contacting them takes place over Zoom and via mobile phones.

The challenge is designed for teams of 6 people (maximum size) 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.

**Getting involved** – We're also looking for volunteers to support the delivery of the day, so if you are interested in working with us then contact Kirsty at [kirsty.lowe@emcouncils.gov.uk](mailto:kirsty.lowe@emcouncils.gov.uk) for more information.

Further information will be available soon.

## EMC Leadership Development Programme, cohort two

### Leading through turbulent times

EMC launched a new Leadership Development programme in May 2021. We are now offering the opportunity to join the programme, with new dates starting in October 2021.

The overall aim of this unique and focused programme is to provide senior and middle

managers with the skills, knowledge, and capability to lead their people through turbulent times. Delivered virtually, this programme provides a flexible approach to learning through short webinars, action learning and a resource library, which address key issues and provide practical tools to support managers.

Developed around four key themes of Self Leadership, Leading the Organisation, Leading People and Leading Teams, this programme will help leaders and managers to:

- Develop self-awareness of their own leadership and resilience during turbulence and change.
- Respond to the challenges a crisis and long-term uncertainty create for organisations, teams, and people.
- Identify ways in which organisations can build their resilience, adapt to change, and engage their people during turbulent times.
- Address key challenges when leading and managing people during change and uncertainty.
- Identify strategies and actions to support performance, engagement, and wellbeing of people during change.

The programme will start on 13 October. For further information on the programme visit [here](#), alternatively if you would like to have a conversation about the programme please contact [Kirsty.lowe@emcouncils.gov.uk](mailto:Kirsty.lowe@emcouncils.gov.uk)

### Report Writing Workshop, 27 Sept 2021

EMC is hosting a highly interactive 3-hour virtual workshop on report writing. The session will look at how to build a logical structure of a report helping participants to communicate their ideas clearly and concisely. For more information visit [here](#).

### Contact Details

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

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# In Deep with Darren

## This month, Darren Newman looks at Gender Critical Beliefs following the recent EAT ruling in the Forstater case

It is a sad reflection on the heat generated by the debate over trans rights that in its decision in *Forstater v CGD Europe* the EAT had to spell out what its decision did not mean. It did not mean that they were expressing a view on the merits of either side of the transgender debate; it did not mean that trans people were not protected by the Equality Act and it did not mean that employers and service providers would not be liable for acts of harassment and discrimination against trans people carried out in the course of employment. What the decision does mean however is that those with gender-critical beliefs – which we can broadly take to be a set of beliefs about the importance of biological sex rather than gender expression in the consideration of discrimination against women – are entitled to the protection of the Equality Act. Their beliefs fall within the protected characteristic of religion or belief.

Ms Forstater is a freelance writer and researcher whose contract as a visiting fellow at a think tank was not renewed – she alleges – because of the gender critical views that she had expressed on social media. The Tribunal initially dismissed her discrimination claim, finding that her beliefs about the immutability of biological sex – she essentially believes that trans women remain biologically male and that in some circumstances it is important to acknowledge this – did not qualify for protection. The Tribunal found that her beliefs were ‘not worthy of respect in a democratic society’. This certainly seems an extreme position for the Tribunal to take. Her beliefs are controversial and considered by many to be offensive – but they are also widely shared. Condemning them as not worthy of respect seems like a rather partisan line for the Tribunal to take.

There is slightly more to it than that. The Tribunal’s finding was based on one of the accepted criteria for judging whether or not a belief is protected. In the case of *Grainger v Nicholson (2010)* the EAT set out five criteria derived from case law dealing with the right to freedom of religion and belief under Article 9 of the European Convention on Human Rights.

The fifth criterion is that the belief must be ‘worthy of respect in a democratic society, be not incompatible with human dignity and not conflict with the fundamental rights of others. The Tribunal’s view was that Ms Forstater’s beliefs failed this test because they were in conflict with the rights of trans people established by earlier decisions of European Court of Human Rights.

The EAT has overturned this decision and held that only the most extreme beliefs should be held to fail the ‘worthy of respect’ test. They really were very clear about this: saying that it was only beliefs ‘akin to that of pursuing totalitarianism, or advocating Nazism, or espousing violence and hatred in the gravest of forms’ that were excluded from protection. That certainly sets the bar pretty high. It should at least avoid a slew of further cases in which Tribunals have to weigh up a range of controversial opinions and decide on whether or not they are worthy of respect. In the vast majority of cases, it will be clear that they are.

There really should not be a problem with opening up the category of religion and belief in this way. As the EAT made clear, just because Ms Forstater is protected by the Equality Act, that does not erode the protection afforded to anyone else. The right not to be discriminated against or harassed does not involve a right to discriminate against or harass others.

Protected characteristics under the Equality Act are not in competition with each other - it is not accidental that Section 4 of the Act lists them in alphabetical order. It is unlawful to treat somebody less favourably on the grounds of their belief, but it is not unlawful to require them to treat others with respect and avoid subjecting them to harassment. This distinction is particularly important when it comes to the protected characteristic of religion and belief because a strong belief in a controversial position – whether religious or philosophical – might well affect how you interact with others. But so far Tribunals and the EAT have been happy to draw a clear distinction between someone’s beliefs and their behaviour.

A good example is the case of *Wastaney v East London NHS Foundation Trust (2016)*. In that case an employee was disciplined for failing to respect



professional boundaries when pressing her religious views on a more junior employee. This was held not to be discrimination because the employer was not concerned with what the employee believed, but with how she behaved – and they were two different things.

Some forms of religious expression – for example, a Sikh wearing a turban – may be inseparable from the belief itself. But in most cases there is a distinction to be drawn. If the employer's rule about behaviour is very strict it may amount to indirect discrimination because it places people with that belief at a particular disadvantage. But there is no indirect discrimination if the employer can show that the rule is a 'proportionate means of achieving a legitimate aim'. Protecting other employees from unlawful harassment is certainly a legitimate aim and treating harassment as a disciplinary matter seems proportionate to me – although everything, as ever, depends on the circumstances.

What I think the Forstater case does mean is that employers cannot simply exclude an employee on the basis that they have a belief that their colleagues may find objectionable or even highly offensive. But if that belief is expressed in some way that impacts on the workplace and creates a hostile working environment, then that is a different matter.

The employer will need to be careful to keep matters in proportion and not overreact. Debate and argument is perfectly legitimate as long as both sides enter into the discussion of their own free will and express themselves with a modicum of basic courtesy.

When things escalate beyond acceptable boundaries, however, the employer is entitled to step in and insist that such matters are kept out of the workplace.

Nothing in the EAT's decision in Forstater prevents an employer from applying basic common sense.

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

## National Developments

### Pay Negotiations – Green Book

We gave you an update on developments with national pay negotiations last month, with an offer being made by the National Employers. The offer was rejected by the unions in a letter on 21<sup>st</sup> May. In that letter, the unions asked for urgent talks and, in response, lead Members of the Employers Side of the NJC met with unions earlier this month. At the meeting, the Employers re-iterated the offer and asked unions to clarify what they would be seeking in relation to the terms and conditions elements that the employers were offering to explore. The unions' request to increase the offer will be responded to following consideration at a future full meeting of the Employers, however the financial challenges faced by councils has been stressed.

We will keep you informed of further developments with these pay negotiations as soon as they arise.

### Youth and community workers: pay 2021

The Joint Negotiating Committee (JNC) Youth and Community Staff Side has submitted its [pay and conditions claim for 2021](#). The headline element is for a ten per cent increase. The National Employers will shortly undertake a consultation on this.

### Extension of Flexibilities in Right to Work Checks

This month the Government announced it had decided to push the date back the date for the resumption of physical document checks to 1 September 2021. Until then, employers can continue to accept a scanned copy or a photo of original documents. From that date, when carrying out a document check you must be in possession of the original prescribed documents as set out the employers' guide at: [guidance](#) Alternatively, where applicable, you can use the Home Office online right to work via <https://www.gov.uk/view-right-to-work>.



## Mandatory COVID Vaccinations for Elder Care Home Workers and Visitors & All CQC registered Care Homes

This month the Government announced its intention of making COVID vaccinations mandatory for those working in and visiting elder care homes. This is subject to parliamentary approval and the Government has laid [draft amended Regulations](#) under Section 162 of the Health and Social Care Act 2008, with the intention these will be debated before the summer recess on 22 July. The draft Regulations include extending the vaccination requirement to all CQC-registered care homes accommodating people requiring nursing or personal care, and to everyone entering a care home, regardless of their role, unless they meet specified exemptions.

Assuming the draft regulations are voted through, there will be a 16-week grace period for staff to take up vaccination. Operational guidance to support implementation is planned. DHSC has also published [Stakeholder Questions and Answers](#) about the policy and its implementation.

We are liaising with colleagues at the LGA and will keep you informed of any national workforce guidance that is developed.

## National Agreement 'Green Book' updated Part 4.12 Guidance

Section 4.12 of the Green Book which concerns guidance on Term Time Only employees' terms and conditions has been updated to reflect the increase to the minimum annual leave entitlement that was agreed as part of last year's national pay award. The circular containing the revised guidance and updated calculations was recently issued to councils and can be accessed [here](#).

## LGA COVID Workforce Research Report 7 May 2021

Councils are continuing to complete the now monthly survey conducted by the LGA on workforce aspects of COVID. The report showing the results of the most recent survey can be accessed [here](#).

Continuation of the survey is being reviewed.

## LGA NARE Workforce COVID Update

The most recent issue (no. 31) of the COVID Workforce Update which is put together and co-ordinated by EMC and its fellow Regional Employers and the LGA can be found [here](#).

## EU settlement scheme and right to work checks

EU settlement scheme and right to work checks  
The official deadline for applicants to apply for [settled status](#) is today (30th June 2021). Up to that date, an employer verifies an EU citizen's right to work by checking passports or national identity cards. However, as the [Government's webpage on checking a job applicant's right to work](#) sets out "After 30 June 2021, the new immigration rules for recruiting people from outside the UK will apply. You will not need to make retrospective checks for existing employees".

The Government has published comprehensive guidance on the new immigration rules which can be accessed [here](#).

## Apprenticeships

This week, the LGA launched its annual Apprenticeship Survey for 2021. The survey provides the LGA with key information on how the sector is progressing on apprenticeships, highlighting key challenges, providing evidence when lobbying government and providing information that can be used to help councils benchmark their performance.

Councils are asked to respond by 5pm on 28<sup>th</sup> July 2021 via the following link: <https://www.surveymonkey.co.uk/r/Z33QQ8B> [if clicking on the link doesn't work, just copy and paste it into your browser] A word document is also available.

A webinar on Wednesday 4<sup>th</sup> August will go through the results and trends. Please direct any queries to Jamie Saddler at [jamie.saddler@local.gov.uk](mailto:jamie.saddler@local.gov.uk).

