

HR in the East Midlands

April 2019



We hope you enjoyed the Easter break and the bonus of warm weather. A topic that has been simmering for the last 3 years also warmed up recently, when the Government launched a further consultation on its proposals to cap exit pay (see below). This is also the subject of Darren Newman's analysis in our "In Deep with Darren" article. Thanks to everyone who responded to the pay spine implementation survey – see the national news section for the results, along with other national developments.

Exit Pay Cap Consultation

Last week we circulated information on the new consultation that the Government is undertaking on capping exit pay in the public sector.

We would welcome your views to shape our regional and national responses to the consultation. For all the information, including our FAQs, click here: [exit pay cap](#)

Reminder Alert!

On an annual basis, councils covered by the apprenticeship levy will also need to report the number of new apprenticeship

starts from April 2018 to March 2019.



Welcome to Mila Pereira



We are delighted that this month Mila Pereira has joined our small but perfectly-formed HR and Learning & Development team. Mila is our new HR and Learning & Development Co-ordinator and is on secondment from Leicester City Council. She brings with her a vast experience of working within the public sector and is looking forward to working to support you over the next 12 months.

Projects with Local Authorities

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

- Facilitating chief executive appraisals
- Advising at a disciplinary hearing
- Advice on options for a revised approach to job evaluation

To find out 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



Learning & Development

This month, we are featuring the following learning and development opportunities on offer over the coming months:-

East Midlands Coaching Conference 2019, 26 June

This will be our 7th annual coaching conference and will be opened by Chief Executive of Melton Borough Council - Edd de Coverly, who is also an experienced coach.

Change will be the conference theme, with Kim Morgan, head of Barefoot Coaching, providing the keynote session on this topic. The conference will offer a range of smaller practical workshops, designed for coaches from beginners to experienced practitioners, such as:-

'Seeing Me, Seeing You, Seeing Them' - how to know and understand yourself and others better, in order to improve the results that you get. You will explore how, with small tweaks, you can communicate better to enable more fruitful conversations and relationships. These benefits can impact on your work with individual clients, with teams and with contracting and stakeholders.

We'll start the day with a session on Positive Psychology and Coaching and we hope to see as many of you as possible there! For more information and to book a place visit [here](#).

LEAN Practitioner Training

Back by popular demand! We had great feedback on our first programme and are delighted to offer a further opportunity for this 2-day training in July. The programme develops an understanding of how using a variety of LEAN thinking and improvement tools can achieve improved services and outcomes. It also addresses the wider cultural and people factors that affect organisational improvement and performance. For further details, click [here](#).

Improving Productivity and Performance – A practical model for organisations and managers

At our People Conference in February, the session presented by Steve Whiddett on PACE – a model to support productivity and performance improvement – generated much interest.

For those who wanted to learn more and practice using the model, last week we held a regional workshop. Feedback from participants was really positive with an overwhelming majority of respondents providing an overall "excellent" rating for the workshop.

There are further opportunities to understand how the model and associated skills can be applied within your organisation to effectively address new situations, resolve existing problems or issues or improve performance or productivity. This can be applied at an individual, team, service or organisational level.

Options include:-

- A briefing to your senior management team to include the model and case studies – this could be delivered virtually.
- A PACE workshop delivered in house and tailored to your needs
- A regional event where you can book a table for your managers to learn about the PACE model and work on a problem or issue they are looking to address so they can put the model to use.

If you would like further information or discussion these options further, then please contact Lisa Butterfill.

Contact Details

For further information about any of our work please contact the Local Government Services Team. Either call 01664 502 620 or email:-

Sam.Maher@emcouncils.gov.uk,
Lisa.Butterfill@emcouncils.gov.uk,
Kirsty.Lowe@emcouncils.gov.uk
Mila.Pereira@emcouncils.gov.uk



In Deep with Darren

Darren Newman's in-depth analysis of a topical HR issue and its implications for local authorities.

Exit Payment Cap

I have to admit that I am surprised that the Government has finally launched its consultation on capping public sector exit payments. I would have thought that they would have enough on their plate already. Nevertheless, some three years after the Enterprise Act 2016 introduced the power to limit public sector exit payments to £95,000, we have a new set of draft Regulations aiming to do just that. These replace the original draft Regulations issued in 2016, which the Government was forced to abandon.

Three years on, you might expect that these Regulations would be carefully thought through, internally consistent, and that they would resolve the problems presented by the original draft. Think again. These Regulations are a work in progress which give some insight into the way in which the Government is thinking about the issue, but they cannot possibly be the final version. Despite the lengthy delay, they bear all the hallmarks of a rushed job.

For example, it has always been the Government's policy that the 'total amount of exit payments' made to a public sector employee in respect of the ending of their employment should not exceed £95,000. That policy is also reflected in the guidance published as part of this new consultation. This says:

When calculating whether an individual's exit payment should be subject to the £95,000 cap, employers must take into account all payments related to exit received by the individual within a 28 day period.

The problem, however is that this is not what the draft regulations say. The draft published in 2016 was clear that the cap applied to the aggregate payments made to an employee. The latest draft is not. There is certainly no reference to looking at all the payments made over a 28-day period. In fact, the way in which the Regulations are drafted means that the cap will

apply to each individual element of the various exit payments made by the employer. This would allow you to have a £94,000 redundancy payment plus another £94,000 agreed in a settlement agreement, plus another £94,000 pension strain and so on.

So either the Government has changed the policy in a fundamental way – in which case the draft guidance is wrong - or the draft guidance accurately reflects the policy and the Regulations are wrong. Much as I would welcome a change in policy, I think this must be a drafting error in the Regulations. It does not say much about the care with which this draft has been prepared that such a mistake should get this far.

Elsewhere in the draft Regulations we do see a clear – and welcome – shift in policy. In particular, the new draft includes a major new exception in relation to payments in lieu of notice. The Regulations specify that a payment in lieu of notice is not an exit payment if it 'does not exceed one quarter of the relevant person's salary'. This effectively means that for all employees on three months' notice or less, a payment in lieu of notice does not count towards the £95,000 cap.

More flexibility is also given in respect of settlement agreements. Payments under a settlement agreement or an Acas conciliated settlement do count towards the cap, but there is now a big exception. The Government proposes that directions from the Treasury would allow the cap to be relaxed when the employer believes that a case involving whistleblowing or discrimination would result in a finding favourable to the employee. There would be bureaucracy to overcome in terms of getting the Treasury to sign off on the settlement agreement in question – but at least this doesn't force a council to mount a hopeless defence against a strong claim and wait for the Tribunal to make an award.

The central problem for local government, however, remains the issue of pension strain. The cap covers 'any payment made to reduce or eliminate an actuarial reduction to a pension on early retirement or in respect of the cost of a pension scheme of such a reduction not being made'.



This element is particularly important when it comes to the redundancy of long serving employees in local government who have reached the age of 55. The pension strain costs alone can exceed £95,000 for even modestly paid employees.

One of the reasons that the Government did not proceed with the draft Regulations issued in 2016 was that they failed to grapple with the relationship between the employer's obligation to make a payment into the pension fund and the employee's clear entitlement to certain benefits under the Local Government Pension Scheme. It is one thing to instruct an employer not to make a payment, it is quite another to remove the legal entitlement that makes the payment necessary.

As far as I can tell the latest version of the Regulations takes us no further forward. Imposing the cap will not in my view affect the entitlement of an employee to an unreduced pension on being made redundant at the appropriate age. Quite how this would be resolved in an individual case is unclear – would the employee have to take a case to court in order to obtain the benefit to which they were entitled? It would be grossly irresponsible of the Government to proceed with the cap as set out in these Regulations without making appropriate changes to the scheme itself, but it is not clear how or even if they intend to do this. More work is clearly needed before they can take this policy forward. Being forced to look at this issue properly might also help the Government see that the proposed cap has a much wider impact than simply limiting huge cash payouts to highly paid executives.

We do not yet have an implementation date for these Regulations. The consultation runs until the beginning of July, so we might expect the final regulations to be laid before Parliament this autumn. But it is clear that further changes will need to be made before the Regulations are fit for purpose. Given the amount of political upheaval we can expect over the course of 2019, I would still be surprised if the Government manages to get this done by the end of the year.

More information can be found on Twitter:
@daznewman

National Developments

Workforce Focus

Taking stock of the local government workforce – sharing HR ideas for the future.

Today the LGA has published Workforce Focus. The primary aim of this document is to help senior HR professionals and their teams to develop local action plans for workforce improvement by providing facts and ideas. The document can be downloaded here: [workforce focus](#)

National Survey on Pay Spine Implementation

Thank you to everyone who provided their response to the recent survey on implementing the new national pay spine. There were 238* responses in total, and the national picture is summarised below:-

Local or National Pay?

198 councils use national pay bargaining, 40 are on local pay agreements, of which 3 have or will be returning to national pay.

Has new pay spine been implemented in April so employees will receive new pay rates by May?

Yes, 183

No, 15

Delay agreed / discussed with TUs?

Discussed and agreed, 3

Discussed but not agreed, 9

Neither discussed nor agreed, 3

Has new spine necessitated wider changes eg, grade restructure?

Yes, 44

No, 154

***London Councils conducted its own separate**

survey: Ready for implementation: 30 'yes', 1 'no' and 2 on local pay bargaining



Summary data on the gender pay gap in local government 2019

The LGA has produced an initial report summarising the data submitted to the Government's gender pay gap service by English local authorities on their gender pay gap. The summary can be accessed [here](#)

Soulbury Committee

The Soulbury Committee has updated and revised its constitution. The up-to-date version of the terms and conditions for Soulbury Officers (the "Blue Book") can be accessed on the LGA's website [here](#).

ACAS Guidance: Neurodiversity

ACAS has recently published new guidance on neurodiversity on how it can be better supported within workplaces. The guidance can be accessed here: [Guidance](#)

Injury to Feelings Awards

In addition to financial compensation, Employment Tribunals can also make an award to successful discrimination claimants for injury to feelings. The Court of Appeal set out guidance on such awards in a case it decided in 2003 – Vento v Chief Constable of West Yorkshire Police. Three levels, or bands, of award were identified as part of this guidance are now often referred to as "Vento bands."

The 'lower band' is "appropriate for less serious cases, such as where the act of discrimination is an isolated or one-off occurrence". The 'middle band' relates to "serious cases, which do not merit an award in the highest band". The 'top band' covers "the most serious cases, such as where there has been a lengthy campaign of discriminatory harassment on the ground of sex or race". Only in 'the most exceptional case' should an award for injury to feelings exceed this top band.

The awards relating to these bands are revised annually and were increased this month:-

- £900 to £8,800 for the lower band
- £8,800 to £26,300 for the middle band
- £26,300 to £44,000 for the upper band. With exceptional cases being capable of awards exceeding £44,000.

These new Vento bands will apply to successful claims presented on or after 6th April 2019.

National Events

LGA Schools Workforce and Employment Law conference

The above conference will be held in York on 13th June and in London on 18th June for those providing HR advice or in a management role within schools. It will provide updates on issues relevant for schools, such as:

- National schools' workforce policy
- Employment law developments most relevant to schools
- The impact of the upcoming changes to teachers' pay
- The latest on the apprenticeship levy, targets and support available to schools
- Support available to improve the wellbeing of teachers in your area from practitioners at school level and national experts.

It costs £214+VAT for LGA members and £345+VAT for non-LGA members. Details are on the LGA website:- [here](#)

PPMA Conference 2019

The annual Public Sector People Managers' Association (PPMA) conference takes place in Birmingham next month. A link is provided below to the website for more detailed information on the 3-day event, which runs from 14th to 16th May at the Hilton Birmingham Metropole.

