



HR in the East Midlands

October 2020

Exit Pay continues to be the hot topic and Darren Newman provides further insights on it in his article this month. Darren will also be providing a webinar next week – details are below. The national news section rounds up developments on exit pay, pay awards, the job support scheme, Kickstart and apprenticeships. Our L&D section features a range of opportunities to support your work and development.

Employment Law Webinar

We are offering a regional Employment Law Update on 4 November 2020 facilitated by Darren Newman. It will run from 2.00-4.15pm to include a 15-minute break. It will cover:-

- what the exit pay cap means in practice – how it affects the local government pension scheme, which payments are included in the cap and the circumstances in which a council can 'relax' the restriction.
- the key employment law developments of 2020 covering working time and sleepover shifts, employment status, unfair dismissal law and the latest cases on discrimination and equal pay.
- a look ahead to 2021 and the changing employment law landscape.

As usual there will be plenty of time for questions.

The cost to attend is **£65 per delegate** with a discount for multiple bookings (**BUY ONE PLACE AND GET THE OTHER HALF PRICE**) To book places please visit our website [here](#).

Working from Home Allowances & Approaches Survey: National Results:

Last month we gave the regional results from our survey on allowances and approaches to working from home. It was part of a nationwide survey conducted by all regional employers' organisations. We now have the compiled national results, providing data from 157 councils. From this, 98% of councils do not provide a home working allowance for staff who are working from home due to COVID. The data shows the range of what other support is provided in terms of equipment etc. The results are available [here](#).

The CIPD held a webinar on Long Term Home Working, highlighting their recent research with insights from the private sector. It is available here: [CIPD](#)

Projects with Local Authorities

During September we have provided support to councils on individual assignments including:-

- Harassment & Bullying investigation
- Coaching
- Mediation

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

Virtual Action Learning Sets – a case study

Over the last few months, we have experienced a rapid pace of change, affecting both our work and home environment. This change has required people to react, plan and do at a speed that can be both overwhelming and all-consuming.

EMC has developed a programme of support for councils in the region to help with these implications. An example has been our virtual action learning sets and during the summer we ran two virtual action learning sets in a local authority - one for managers and one for team members.

The sets provided a focused space for individuals to consider areas where they wanted to make progress, exploring work challenges where they felt stuck, or needed an opportunity to refocus and move forward. Here is an example of the great feedback on the programme from a participant:

“I have just been prepping for the next session and I am so surprised how differently I have approached this. My thought process, how I feel, where we are now, where we need to be has changed in such a positive way. This has taken me by surprise, I feel great with this approach. I really do appreciate yours and Lisa’s time to help improve my way of thinking and working”.

This programme included:

- One-hour virtual workshop, introducing the concept of action learning, questioning, insight and working through a problem.
- A 3-hour action learning set, hosted virtually by EMC experienced facilitators, enabling participants to spend time on their chosen problem/challenge.
- A follow-up 3-hour action learning session, providing space to reflect on the thinking and commitments from the previous session and allow individuals to choose to either make progress on the same problem or bring a new problem/opportunity.

While this particular programme was delivered in 3 parts, programmes are tailored to meet the organisation’s needs. Contact Lisa or Kirsty to discuss Action Learning Lisa.butterfill@emcouncils.gov.uk or Kirsty.lowe@emcouncils.gov.uk or visit [here](#) for more information.

EMC Learning and Development Network

The Learning and Development network held its second in a series of focused workshops this month, this time on Performance Management and Appraisals. Participants heard from Rutland County Council and Nottinghamshire Fire and Rescue on their approaches.

The next network is on 26th November and will focus on **training to support equalities** To join the conversation, email Kirsty.Lowe@emcouncils.gov.uk

Taking Your Training Remote – A Regional virtual training programme

Additional dates have been secured for this popular two-part programme supporting the translation of face to face training into the virtual environment.

Our second programme will start in December, taking place on 1 and 15 December. To ensure excellent participant experience we’re limiting numbers, so early booking is recommended. For more information visit [here](#).

Social Connections

Many organisations are keen to share ideas on how the social connections gained from the workplace can be supported while many employees are working remotely.

We are collecting suggestions, ideas and examples and will create a webpage to host the information, creating a resource that can be continually added to. Please send Kirsty any suggestions, ideas or examples to add to the great ideas shared with us already. We’ll circulate the information next month. Email Kirsty.lowe@emcouncils.gov.uk

Contact Details

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

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

Darren Newman provides further insights on the exit pay cap

We now know that the £95,000 cap on public sector exit payments will come into force on 4th November. There may be legal challenges further down the line – the British Medical Association is seeking a judicial review and Unison has just written a formal ‘letter before action’ to the Government indicating that it too is considering that option. It seems unlikely however that these developments will stop the Regulations from coming into force. So local authorities need to decide what to do when the Regulations cut across redundancy exercises that are already in train.

The first thing to be clear about is that the critical date is the date of the payment. It is the making of an exit payment in excess of £95,000 that is made unlawful, so it is the date on which the payment is made that counts. The fact that the employee may have left employment before the Regulations came into force does not matter. Nor will the fact that a binding settlement agreement was signed before the 4th November. If the payment hasn't been made by the 4th, then it will be subject to the cap. That may leave employers in the absurd position of being sued for a sum that they had previously agreed to pay and being unable to settle the case. The Regulations exclude payments made as a result of a court or tribunal order, so the employee will still get paid in full once the case is actually won.

Of course we have always known that in local government the key issue is pension strain. The cap includes the sum that employers must pay into the pension fund to cover the unreduced pension awarded to a qualifying employee made redundant over the age of 55. The issue here is that the cap only applies to that pension strain payment – it does not apply to the pension payment itself. Unfortunately it is not entirely clear that the Government understands this. In a letter sent to council chief executives the Minister for Local Government – Luke Hall MP – has expressed the view that the cap applies not just to the pension strain payment but to the unreduced pension itself. The Government's position is that as a consequence employees must take a reduced pension – possibly

accompanied by a lump sum (within the overall cap) to compensate them.

This is clearly wrong. The Regulations list the payments that are covered by the cap. They specifically include pension strain payments but do not mention pension payments made to an employee. Indeed, how could they? The cap applies to payments made by an employer to an employee who is leaving employment. Pension payments are made not by the employer but by the pension fund. Even when the employer in question is also the administering authority, it is clear that the pension payment is not being made in its capacity as an employer. Even more importantly, however, the actual pension payments are modest regular payments. Even if the payments being made to the employee did count towards the cap it would take several years for them to add up to more than £95,000.

The Minister seems to have been advised that the existence of the cap has the effect of limiting the actual pension rights of individual employees even before the pension scheme regulations are amended. But any pension scheme that follows this advice is certain to face legal challenge from employees who are not receiving the level of pension to which they are clearly entitled under the current rules of the scheme.

The real issue is not the payment of the pension to the employee but how to reconcile the conflict between the newly imposed cap and the provision in the LGPS requiring the employer to make a pension strain payment to cover the cost of the unreduced pension. This conflict is caused by the Government's inexplicable decision to implement the Exit Payment Regulations while still consulting over the changes to the pension scheme that would make those Regulations workable.

Given some of the difficulties that this cap will cause, many will be looking to the ability of the whole council to waive the cap in particular cases. The Regulations do give councils that power – but in reality it is likely to be very limited. The ‘power to relax’ – that really is what the legislation calls it - must be exercised only in compliance with any directions issued by the Treasury – or with the express permission of Treasury ministers. At the time of writing, the Directions have yet to be



published – although they may well be out by the time you are reading this. (Update: they were issued yesterday – see National Developments section.)

But we already know roughly what they will say because draft Directions were published back in 2019 alongside an earlier draft version of the Regulations. In its response to the consultation that followed, the Government indicated that it would widen their scope slightly, but it seems clear that the broad outline will remain the same.

So a council will be able to pay in excess of the cap in cases where the employee's entitlement is protected under TUPE. The council could also apply a waiver where it believes that the employee would be likely to win a claim of discrimination or a claim relating to whistleblowing or health and safety rights. This rules out settlements made on a commercial basis where the employer takes the view that it would win the case but that it would be too expensive to defend. It almost – though not quite – amounts to a public admission of liability. The settlement would also have to be approved by the whole council which would obviously mean that the normal confidentiality that surrounds such agreements could not be observed.

The other grounds on which the council could disapply the cap will cover situations in which not exercising the power would cause 'undue hardship' or 'significantly inhibit workforce reform'. There is also likely to be provision for cases where an agreement to exit was made before the Regulations came into force, but the employee's exit has been unexpectedly delayed. Note, however, that this will not apply where the exit is proceeding as scheduled but the Regulations themselves are being implemented sooner than expected.

Importantly a council must seek the consent of HM Treasury before adopting any waiver on one of these other grounds. On balance, I don't think that these provisions on waiver will be of much use to councils. But there is perhaps hope that the residual power of the Treasury to disapply the cap in particular cases can help resolve the tension between the cap applying to pension strain payments and the current rules of the pension scheme requiring those payments to be made. Once the Government acknowledges that this is a real problem that can't be got around by claiming

that employees should be denied the unreduced pension to which they are clearly entitled, the obvious step is for Ministers to exclude pension strain payments from the scope of the cap until the pension scheme has been amended. If they do not do this then I really think that this hurried implementation of the cap will cause chaos.

More information can be found on Twitter:

[@daznewman](#)

National Developments

MHCLG Letter to Chief Executives & Exit Pay Cap Treasury Guidance/Directions

Luke Hall MP (MHCLG) has written to all councils' chief executives and administering authorities in respect of the implementation of the Restriction of Public Sector Exit Payment Regulations 2020 from 4 November 2020. A copy of the letter can be downloaded [here](#) The LGA's pensions team are considering its contents alongside legal advice the Pensions Scheme Advisory Board (SAB) is currently obtaining on this matter.

Yesterday HM Treasury published the Guidance and Directions to accompany the Exit Cap Regulations: [guide](#) These do not look substantially different from those consulted upon. The LGA is working on providing more information for us to send to you in due course. As soon as this is available, we will send it through to you.

Exit Pay Reforms – MHCLG Consultation

As featured in last month's HR Bulletin, MHCLG launched its consultation for local government on exit pay cap implications and additional proposals to reform redundancy compensation. The link is available [here](#)

To support councils in responding to the consultation, the LGA have developed a draft response which can then be adapted to reflect each council's own situation, concerns or examples. We circulated a copy of this earlier this week, and it can also be accessed [here](#)



The deadline for responses is 11:45pm on 9 November 2020. EMC would be happy to co-ordinate a regional response and/or ensure that your views are fed into the LGA's national response. **Please email Sam by 5th November**, with your Council's response or any issues/points/information so that this can be reflected within a regional response to the consultation. Sam will also forward it to the LGA to inform their support on this issue for the sector. Contact sam.maher@emcouncils.gov.uk

Craftworkers' Pay Agreement 2020

Agreement was reached this month a national pay award for Craftworkers for 2020-21. A copy of the agreement is available [here](#).

Youth & Community Workers' Pay Agreement 2020 – Amendment to Circular

This month agreement was reached with the JNC for Youth & Community Workers for a pay award for 2020, providing a 2.75% increase. Unfortunately, there was an error on SCP 13 of the Professional range in the original circular that was issued and as soon as this was picked up, we circulated an amended version. You can access the corrected pay agreement circular [here](#)

Job Retention Scheme – Job Support Scheme

The [Coronavirus Job Retention Scheme](#) will be phased out tomorrow and will be replaced by the Government's [Job Support Scheme](#).

The LGA's [online guidance on the Job Support Scheme](#) has been updated to reflect the increased Government contribution announced last week and the confirmation that local authorities and other public bodies may be able to claim, provided any private revenues they receive have been disrupted.

Kickstart – Join our Regional Group to access the Scheme

EMC is co-ordinating a regional approach to the Kickstart scheme to enable councils and other partner organisations to access the funded Kickstart scheme. The collaboration will help meet the threshold of 30 placements which are required to access the funding. **There is still time to express an interest in offering a 6-month work placement.** EMC can also provide additional support to those on the placement, to make it as easy as possible for your organisation to participate and provide efficiency in the use of resources. We aim to meet the 30-placement threshold to access funded placements. **Contact Suzanne for more information/to express an interest:** Suzanne.boulton@emcouncils.gov.uk

Results of Latest COVID Workforce Survey

The report setting out the summary findings from the latest workforce survey is available [here](#)

Apprenticeships

LGA Apprenticeship Newsletter – October 2020

October's LGA Newsletter can be found [here](#) including:

- LGA Apprenticeship Support Offer
- Councils in Government's Top 100 Apprenticeship Employer List
- Wanted: Case Studies of Schools Apprenticeships During the Pandemic
- Public Sector Target – Remember to Publish Your Data for 19/20 on Your Website
- Shared PAYE Systems: Issues with Transfers and Incentive Payments for Non-Maintained Schools
- Kantar Social Mobility Research Opportunity
- Provider Offer: DfE Accredited NPQ and Level 5 ODM Standard – School Leaders Apprenticeships
- Apprentices Wanted to Join IfATE Apprentice Panel
- Latest Update on Apprenticeship Standards Development

