



HR in the East Midlands

September 2020

Exit Pay has been the main issue many of us have been grappling with this month and Darren Newman's article focuses on this too. The national news section gives you links to all the information circulated so far. Below we have the results of recent survey to share with you on working from home payments/policies. This month we have a case study to share on running virtual recruitment assessment centres.

Regional Employers' Board & Joint Council

The Regional Employers' Board (REB) and East Midlands Regional Joint Council (EMRJC) met on 8th September. The meetings focussed on latest developments including the exit pay cap, current workforce issues relating to COVID, local government reform in Northamptonshire and broader reforms. Following feedback from the Employers' Board meeting, EMC will be providing councillor development on themes to include new proposals for planning regulations, climate change and learning lessons from COVID and new ways of working.

EMRJC agreed to work jointly on employee wellbeing. Joint agreement was reached to increase caretakers' letting fees by 2.5% with effect from 1st April 2020. The revised fees can be accessed [here](#). The Employers' Side of the EMRJC formally recorded their thanks and recognition to all employees and to unions for the flexibility and support shown in the response to COVID-19. The next meetings will be on 25th November 2020.

Working From Home Survey – Regional Results

Thank you to everyone who responded to the survey we conducted on payments and policies relating to working from home, 73% of the authorities in the East Midlands responded. The regional results are available [here](#). The national results are currently being compiled by the LGA and will be shared in October, but we are able to share with you headline information.

Nationally, the analysis so far shows that 161 (46%) councils have provided details on Home Working Allowances. 149 pay no Home Working Allowances (93%) the remaining 12 councils only pay permanent (pre-covid) contracted homeworkers an allowance (average £24 per month). So, no council is paying a Home Working Allowance to staff who have been told to work from home during the pandemic.

Projects with Local Authorities

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

- Mediation
- Grievance hearing advice
- Strategic HR support
- Virtual assessment centre – see the case study

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

EMC Learning and Development Network

EMC's Learning and Development network is hosting a focused workshop on Performance Management and Appraisals, taking place on 15 October. The goal will be to provide a space to share what you are doing and to learn from the experience of others, on the subject of Performance Management and Appraisals. To join the conversation email Kirsty.Lowe@emcouncils.gov.uk

Our first focused L&D network meeting earlier this month explored agile working, strategies and support programmes, with case studies from Harborough District Council and Mansfield District Council on their agile journeys.

Wellbeing Conversations - interactive workshops for managers

During September EMC ran a series of interactive virtual workshops for manager on wellbeing conversations. Split into two complementary workshops, they offered managers practical development and exploration to enhance their wellbeing conversations with staff. Feedback from the sessions has been excellent;

"Some great tools shared which will be useful "

"made me think about my staff and their wellbeing"

A number of authorities have taken these sessions in house, for more information on how they can be offered to managers within your authority contact

Kirsty.Lowe@emcouncils.gov.uk

Taking Your Training Remote – A Regional virtual training programme

Additional dates have been secured for our two-part programme supporting the translation of face to face training into the virtual environment. Date will be published shortly for a December start. Get in touch with Kirsty.lowe@emcouncil.gov.uk if you are interested in joining, numbers will be limited, early booking recommended.

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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Virtual Recruitment Assessment Centre

In September 2020, EMC colleagues delivered a virtual recruitment assessment centre in partnership with an East Midlands local authority for 37 shortlisted candidates as part of their successful graduate development programme.

Given the current situation we worked with the authority from Spring 2020 to design the assessment centre for virtual delivery linked to their key criteria for the role. Each assessment centre lasted just over 3 hours and included activities such as preparing and delivering a presentation and taking part in a group exercise.

Working closely with the authority, the assessment centre was designed to work using MS Teams, the platform already extensively used by the authority, and our design and delivery support included;

- Design of all activities and assessment criteria linked to the requirements of the role/programme
- Design and production of all supporting documentation for candidates and assessors including information packs, delivery scripts and contingency and mitigation plans
- Virtual pre support including; assessor briefing and technical IT drop in sessions for candidates
- Production and co-ordination of timetabling and virtual invitations across all assessment centre sessions, to ensure clarity of information and ease of access for both candidates and the assessment team at the assessment sessions
- Virtual delivery; co-hosting and assessing activities, starting with a virtual welcome
- Collation of assessment results and feedback to enable effective selection decisions by the authority

For more information about the support EMC can provide for recruitment and selection, including psychometric testing and the design and delivery of both face to face and virtual assessment centres please contact Lisa.Butterfill@emcouncils.gov.uk



In Deep with Darren

Darren Newman looks at the exit pay cap proposals made to public sector workers.

One of the surprises of the summer has been the revival of the Government's proposals for capping exit payments made to public sector workers at £95,000. This was first proposed in the Conservative Party manifesto in 2015 which pledged to abolish 'six figure pay-outs' for the 'best paid public sector workers'. The Regulations published in July this year were the expression of that policy – but far from being limited to the best paid public sector workers they have a potentially major impact on the pension entitlement of a wide range of long-serving local government employees.

The central problem is this. The payments which are included in the overall pay cap cover not just cash settlements and redundancy pay but also 'pension strain' - the sum that local authority employers must pay into the relevant pension fund when members of the scheme qualify for enhanced benefits after being made redundant at the age of 55 or over. The basis on which this sum is calculated varies between funds, but can easily exceed the £95,000 cap even without taking other elements such as redundancy pay into account. This is true not only of highly paid senior managers, but also long-serving employees in middle-ranking roles.

Technically the cap itself does not affect the entitlement of pension scheme members. While the Regulations prevent the employer from making payments which exceed the cap, they do not of themselves change the rules of the pension scheme. While the employer may therefore be prevented from making a full pension strain payment into the pension fund, that does not alter the fact that the individual member is still entitled to the same enhanced benefits. Quite how those benefits would be paid for is far from clear. There is a similar issue with contractual redundancy payments. The employer's ability to pay them might be limited by the cap, but until there is a change in the contract itself, the entitlement of the employee being made redundant does not change.

So whatever you think of the merits of the cap itself, it is vital that it is not actually introduced until employers across the public sector have had the chance to renegotiate contracts where appropriate. Even more important, the rules of the local government pension scheme must be changed to reflect the operation of the cap before it comes into force. The Ministry for Housing, Communities and Local Government have launched a consultation on changing the rules of the pensions scheme and limiting local government redundancy payments. The consultation is scheduled to run until November 9th and so it is difficult to see how the necessary changes could be made before the end of the year. Nevertheless, if the Government has any sense at all, it will wait until that consultation is completed, and new rules put in place, before implementing the exit pay cap.

With that in mind it was worrying to see the Regulations making progress when Parliament returned from its summer break with the Government failing to give any assurances – or even information – about timings. The Regulations have to be approved by a vote in both the House of Commons and the House of Lords. The Lords approved them on 23 September and the Commons debated them in committee on the 21st. Ordinarily they would then have come to a vote on the floor of the House of Commons the next day. In the event, however, the Government chose not to move the motion to approve them.

So we are left hanging. The Government could put the Regulations to a vote on very little notice – there is, under the procedure, no opportunity for any further debate. Once they have been approved the Minister needs to sign them (which is when they are said to be 'made') and they will then come into force three weeks later. That could happen before the end of October or it could happen some time next year. If I were a gambling man, I would bet on them not coming in before 2021 – but I wouldn't bet much.

Whenever the Regulations come in, it seems certain that some employers will be caught on the hop – in the process of negotiating a settlement that exceeds the cap but running out of time to close the deal. The three week period between the Regulations being made and them coming in to force will hopefully allow both sides



to focus their efforts – but it is important to remember that it will not be enough to just agree a deal in that period, the actual payment will also need to be made before the cap becomes law.

There will be a mechanism for waiving the cap in individual cases. Decisions to pay in excess of £95,000 will however have to be made by the whole council – they can't just be decided by senior management. And the Council will not have a free hand. Any waivers must be granted in accordance with Treasury Directions or with the express permission of ministers. We expect that the Directions will allow for a waiver when the employee is claiming for discrimination, whistleblowing or a breach of health and safety rights. However it is likely that the Council would have to decide that such a claim would be likely to succeed – not just that it is a good idea to settle it. A waiver may also be possible when the application of the cap causes particular hardship – but this is the sort of thing that will need ministerial sign-off and would only be available in extreme cases.

It is highly unlikely that the Treasury Directions would allow the waiver of the cap just because the parties negotiated the exit before the cap came into force. There is some suggestion that a waiver might be appropriate if a previously agreed exit has been unexpectedly delayed for some reason, but that will not cover the more usual situation in which the cap just happened to come into force while a settlement agreement was being negotiated.

What is more, it is the date of the payment that counts, not the date of the exit. When the Regulations come in, they will also apply to ongoing tribunal claims that are in the process of reaching a settlement. Any decision to settle a case for more than £95,000 – even where that represents good value for money – will only be allowed if the Council agrees a waiver and complies with Treasury Directions. It may still be some months before the cap actually applies, but to be on the safe side it is probably better for both employers and employees to really apply their minds to any ongoing negotiations. If there is a deal to be done, it is best done quickly.

More information can be found on Twitter:

[@daznewman](https://twitter.com/daznewman)

National Developments

Exit Pay Cap Consultation

Earlier this month, MHCLG launched its consultation for local government on exit pay cap implications. The link is available [here](#).

It should be noted that this consultation is *not* seeking views on the government's position regarding exit pay reform, which has already taken place and was led by HM Treasury. Instead, its focus is on:-

- The effect/s that the proposals will have on the regulations which currently govern exit payments (including both redundancy compensation pay and early access to pensions) in local government.
- The impact that the key elements of the proposals (see below) will have on the local government workforce. Consultation responses will inform an impact assessment, including equalities considerations which will be issued alongside the regulations when these are laid before Parliament.

The key elements are summarised as:

- A maximum of three weeks' pay per year of service;
- A maximum of 15 months on the amount of a redundancy payment;
- A maximum salary of £80,000 on which an exit payment can be based;
- Limiting publicly funded pension top-ups;
- A £95k cap on the total of all forms of compensation, including redundancy payments, pension top-ups, compromise agreements and special severance payments.

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 for our sector. Contact sam.maher@emcouncils.gov.uk



Exit Pay Cap Seminar

Last week the LGA provided a seminar on the exit pay cap, following a request from EMC and other Regional Employers. Feedback from those who attended has been positive, but we are aware that not everyone was available to participate. Download the presentation and watch the webinar from this event from [here](#).

Results of Latest COVID Workforce Survey

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

Consultation on Pension Scheme Changes following Age Discrimination Ruling

MHCLG has launched a separate consultation about planned changes to the Local Government Pension Scheme (LGPS) regulations following confirmation the Court of Appeal ruling on the McCloud and Sargent age discrimination cases also applies to the LGPS. The consultation is over proposals for how this age discrimination will be removed and remedied within the LGPS.

Background

When the LGPS changed from a final salary to a career average pension scheme in 2014, protections for older scheme members were introduced. Similar protections were given in other public sector pension schemes. This was subject to a legal challenge in which it was ruled that younger members of the Judges' and Firefighters' Pension schemes have been discriminated against because the protections don't apply to them. Later, it was confirmed that this ruling also applied to similar protections in the LGPS.

Consultation

The government is looking to fix this discrimination as quickly as possible and welcomes your views on how best to do this. The proposals seek to extend the protection to anyone that was considered an active member of the LGPS on 1 April 2012 and went on to build up benefits after 1 April 2014. The protection

would apply to benefits built up from 1 April 2014 to 31 March 2022. The [consultation](#) closes on **8 October 2020** and employers are encouraged to take part.

The LGA will be responding and a copy of their response should be available by the end of September for councils to review in [news section](#) of the website.

Data retention

The draft proposals will require final salary calculations to be made for a wider group of members than previously, meaning final salary data will be needed to properly assess benefits. We are conscious that you may be coming to the end of your normal data retention periods for HR and payroll data. However, we do need you to continue to keep records of employee hours and any contractual changes. This information will be needed to work out any changes to members' pension benefits as a result of this judgement.

The government has confirmed that any changes will come into effect 12 months after they are announced so we know it is some time before the final position will be known and we do not want you to destroy this data in the meantime.

Apprenticeships

LGA Apprenticeship Webinars

If you were not able to join the webinars on the funding rules you can find them at the links below:

Apprenticeship Funding Rules for Councils as Employers

[Download the slides from the KHUB here](#) (must be logged-in to the KHUB to access)

[Listen again to the webinar here](#)

Apprenticeship Funding Rules for Councils who are Main Providers and Employer-Providers

[Download the slides from the KHUB here](#) (must be logged-in to the KHUB to access)

[Listen again to the webinar here](#)

