



HR in the East Midlands

August 2023

We hope that you enjoyed the bank holiday weekend. Taking our cue from the cooler weather, this month's bulletin provides information on events and support coming up over Autumn. Darren's article provides a reminder of the importance of being clear on the true reason for dismissal to defend a Tribunal claim. The national news section gives an update on the pay negotiations and a link to a circular we recently issued on pay for suspended chief officers.

Free Event: Managing Complex Absence Cases and Getting the Best out of Occupational Health

Earlier this year, we conducted a survey on occupational health provision and many of you responded that there was room for improvement with your current provider. Our annual sickness absence survey included questions on how you would like us to support you with employee wellbeing and attendance, and you indicated that we should continue to provide advice on cases, collate and share benchmarking information and policies.

In response to your feedback, we have arranged a virtual event with leading experts who will offer advice on how to get the best out of occupational health and how to manage those complex ill-health cases.

The event is free to attend and will take place on 7th November at 10.00 to 12.000. To book, please contact Suzanne at suzanne.boulby@emcouncils.gov.uk.

Reminder - Employment Law Update Seminar

We are pleased to offer an Employment Law Update Seminar with Darren Newman on Wednesday 4th October 2023. The seminar will offer Darren's pragmatic advice and interpretation of the main developments in employment law and implications for councils.

The session will take place via MS Teams and will run from 10.00am to 12.15pm, including a 15-minute break.

Places will be available at a cost of £65 per delegate for member organisations. We are also offering a discount for multiple bookings – so you will be able to **BUY ONE PLACE AND GET ANOTHER HALF PRICE**.

You can book via our website at the following link [here](#). A purchase order number is required when booking.

Projects with Local Authorities

During August, EMC has supported councils with:-

- Mediation
- Psychometric testing
- Chief Executive appraisal facilitation

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

Sam.Maher@emcouncils.gov.uk

Lisa.Butterfill@emcouncils.gov.uk

Mark.pinchen@emcouncils.gov.uk

Learning & Development

Mediation and Conflict Resolution Training

Conflict at work has been on the increase, and East Midlands Councils has been supporting councils in managing grievances and harassment/bullying complaints and our mediation service is particularly popular.

We have also developed a range of courses to help councils become more self-sufficient in the provision of Mediation and Conflict Resolution, these are:

1. Conflict Resolution Skills for Managers – 1 day on 30 November 2023.
2. Workplace Mediation Skills – 2 days on 9 & 10 January 2024.
3. The Interpersonal Mediation Practitioner's Certificate (IMPC) – 5 days on 15 – 19 January 2024
4. Mediation Development Day (Refresher) – 1 day on 30 January 2024.

To explain about the courses, we have arranged a Webinar on **Thursday 21 September 2023 at 11.00am**. This is to assist interested people in deciding which course would best meet their individual and /or organisational needs. This will be an informal session, providing the opportunity to hear about what is being offered and to ask questions.

To attend the Webinar, please email Mark Pinchen – mark.pinchen@emcouncils.gov.uk for the details.

For further detailed information on the courses and to book, please click on the following link:
[Mediation & Conflict Resolution Training Brochure](#)

As mentioned above, East Midlands Councils offers a mediation service using our pool of qualified mediators. The fact that we are both independent and impartial is an important factor in achieving a successful outcome. The support is provided at not-for-profit rates. For further information on how we can help please contact lisa.butterfill@emcouncils.gov.uk

Councillor Workshop – Equality, Diversity, and Inclusion

Wednesday 20 September 18:00 – 20:30 via Zoom

Whilst the subject matter is serious, this workshop is presented in an engaging manner - with a number of personal and group exercises which reinforce the key messages and principles of the programme which include:

- Equality Act and Protected Characteristics
- Identifying different forms of discrimination
- The Diversity Wheel
- The importance of Equality Impact Assessment
- A focus on Unconscious Bias – developing an understanding of what this is and why it is an issue alongside tips for developing personal awareness of bias.

If equality, diversity and inclusion training wasn't part of your in-house councillor induction programme, or if you have councillors that weren't able to attend those sessions, then this workshop will be of interest. A key outcome will be to help councillors understand the impact the decisions they debate will have on communities and groups. Here is the link to book: <https://www.emcouncils.gov.uk/Councillor-Events/Equality-Diversity-and-Inclusion/80667> or for any questions please contact Lisa or Mila: lisa.butterfill@emcouncils.gov.uk mila.pereira@emcouncils.gov.uk.

Back by popular demand....

We will shortly be releasing information on our blended **ILM 5 Leadership programme**, starting on 8th November 2023.

The programme will be delivered in an interactive and supportive way by high quality expert tutors, providing delegates with the confidence and competence to lead their teams in the 21st Century. It includes navigating the world of hybrid working and features key leadership activities for leading others through change and continuous improvement and innovation. Delegates will also benefit from working with others across the region to build their networks! For any questions and/or to register interest please contact lisa.butterfill@emcouncils.gov.uk



In Deep with Darren

This month, Darren Newman's article looks at the importance of the reason for dismissal, and the requirement for the employer to demonstrate what the reason for dismissal actually is.

Anyone who has studied employment law will know that there are five 'potentially fair' reasons for dismissal: conduct, capability, redundancy, statutory ban and 'some other substantial reason'. This not strictly true...

What Section 98 of the Employment Rights Act 1996 actually requires is that the employer demonstrates what the reason for dismissal actually is. It must then show that that reason falls within one of these five categories. So, for example, the reason for dismissal might be the employer's belief that the employee was stealing from the till. Having shown that, the employer could then demonstrate that this reason falls within the category of conduct and the Tribunal could then go on to consider whether the dismissal was fair.

The crucial point is that the reason for the dismissal is not something that the employer can just choose, like selecting a dish from a menu. The Tribunal will ask what facts were operating on the mind of the employer when it decided to dismiss the employee, not what reason for dismissal the employer decided to opt for.

This is illustrated by the Tribunal decision of Courtney v AGTC Ltd. Mr Courtney was the Operations manager of an online retail business. The relationship between him and his employer deteriorated over several months – partly because it was made clear to him that he was not thought to have the skillset needed to apply for the newly created post of Head of Operations. He also complained that he was being bullied by a fellow manager and that a grievance he had raised about this was not properly addressed. Meanwhile, as part of a reorganisation, some elements of his role were removed, and he was excluded from some management meetings. Detailed criticisms were also made of his performance – although the employer's performance management procedures were never invoked. He was being treated for depression – which was eventually held not to amount to a disability - but he resisted his employer's suggestion that he take a

period of sick leave – eventually taking just a few days sickness absence combined with some annual leave and paternity leave.

Eventually Mr Courtney was made redundant as a result of the ongoing reorganisation of the business – or at least, that was how things appeared. There certainly was a reorganisation and there is no suggestion that Mr Courtney was replaced after he was dismissed. He attended several consultation meetings and was given a redundancy payment. However, The Tribunal found that redundancy was not the true reason for dismissal. Evidence was presented of email discussions between managers some months before the redundancy exercise in which his employment was discussed. It was felt that he was a poor performer and that his complaints about bullying were having an adverse impact on workplace relationships. One manager asked "If we just tell him to "go" what's the most we could be sued for?" and queried whether he could just be told that his job was being relocated "so we don't sack him but basically push him to resign". Discussions with advisors were discussed and the need to be careful and 'do everything by the book'.

Given these emails, it is not very surprising that the Tribunal found that the redundancy exercise carried out a few months later was the *opportunity* for the dismissal rather than the *reason* for it. The company had already decided that Mr Courtney should be dismissed and had then set about finding a mechanism for achieving this. This inevitably made the dismissal unfair. Since the employer had argued that the reason for dismissal was redundancy and the Tribunal had found that it was not, then the reasonableness of the dismissal didn't need to be considered. Just to be on the safe side however the Tribunal went on to hold that the redundancy process was in itself unfair, and the employer had also not acted reasonably in the way in which it had managed the employee's performance.

In part, the case is a reminder that whenever you write an email you should imagine how it would be read by someone for whom it was not intended. Quite why the managers in this case felt free to make the comments that they did I cannot imagine.



Nevertheless, I have some sympathy with their position. The reorganisation itself was not a sham – it had been ongoing for some months and other employees were also being made redundant. I think the Tribunal should have asked whether the employee would still have been made redundant even if the employer not been keen to lose him for other reasons. The fact that the redundancy was welcomed by the employer because it meant that they would lose an employee whom they already wanted to see the back of, does not necessarily mean that redundancy was not the reason for dismissal – although the Tribunal’s finding that in any event the redundancy was not carried out fairly would probably mean that there is no point in appealing.

In any event, in terms of compensation the employer got off rather lightly with an award of just over £2,000. This was because the employee had managed to find alternative work relatively quickly after his dismissal and so his losses were limited.

Darren’s Advice for Employers

I think the main lesson from the case is that asking “how do we go about dismissing this person” will always have the potential to get you in trouble unless you are seeking legal advice and the conversation is covered by legal privilege.

The proper question should be “how do we deal with this issue that has arisen?” If the issue is redundancy, then a redundancy procedure needs to be followed. If the issue is the employee’s performance, then the capability procedure should be used. Procedures are not just the mechanism you use to dismiss an employee. If all goes well, they are a way of avoiding a dismissal by, for example, improving performance or finding an alternative to redundancy. If a decision to dismiss is taken then that needs to happen at the end of the process, not at the beginning of it.

You can hear from Darren directly and ask your burning employment law questions at our update event on 4th October – see the front page for details and a link to book places.

National Developments

JNC Employers’ Circular: Suspension of Chief Officer

Following a recent Employment Tribunal case, an Employers’ Circular was issued on 22nd August 2023 relating to a potential issue concerning what is paid to a Chief Officer who is suspended during an investigation process. A copy of the circular can be found [here](#).

National Pay Negotiations Update

Unite will be taking industrial action in those authorities where they have reached the ballot threshold and the majority vote was in favour of striking. We understand this will affect a small number of councils nationally and just a couple in our region. If your authority has received notice of industrial action from Unite, please let us know by emailing Sam at sam.maher@emcouncils.gov.uk so that she can keep national negotiators updated and to provide an accurate national picture.

GMB is due to start balloting its members on industrial action in some councils from 12th September.

Unison will not be taking industrial action and is seeking to settle the pay agreement, citing the constraints of legislation and a desire to make progress.

A meeting of the **full Trade Union Side of the National Joint Committee** has been arranged for Tuesday 19th September. We are therefore unlikely to hear any further news until after then.

T Levels Newsletter – August 2023

Click [here](#) to view the latest newsletter on T Levels.

