



HR in the East Midlands

October 2021

This month we focus on support to address key workforce challenges: developing managers for hybrid working and promoting local government as an employer. Darren Newman's article focuses on selection for redundancy. We also provide our usual round-up of national developments.

Addressing Skills Shortages & Promoting Local Government

At regional level, two of our priorities, which are interlinked, are to help address skills shortages in the sector and to support councils facing recruitment and retention difficulties. Promoting the sector as an employer of choice and developing a "talent pipeline" are two ways of making progress on both issues. The following initiatives form part of our work on this agenda

Planning Student Placements

EMC is co-ordinating year-long placements for Loughborough University's planning students with local authorities in the region. This is a great way to encourage planners to join the sector following graduation. For more information, contact Sam at sam.maher@emcouncils.gov.uk

T Levels – Supporting Local Talent

EMC will be hosting a workshop on T Levels in partnership with the LGA. The workshop will provide an opportunity to share learning on T levels, and to explore how they can be used to develop and engage local young people to seek a career in local government. See future HR Bulletins for further details.

Kickstart Scheme

This month the Government announced that the Kickstart scheme will be extended until March 2022. As part of this extension, applications from employers and gateway providers will be accepted until **17 December 2021**.

EMC is a gateway for Kickstart, making it as easy as possible for councils and fire authorities in the region to participate in the fully funded scheme. We have received great feedback from councils who are part of our gateway: ***"this has been successful for us as an organisation as well as for the people undertaking placements."***

Councils can join the gateway or increase the number of placements being offered until the new December deadline. For further information contact Suzanne: Suzanne.boulty@emcouncils.gov.uk

Projects with Local Authorities

In October we supported councils with assignments including: -

- Mediation
- Grievance investigations
- Managers' Workshops on Leading Hybrid teams – see the L&D Section overleaf for more information.

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

Leadership & Management for Hybrid Working

Managers are needing to adopt new approaches and hone different skills to be able to navigate through the challenges and opportunities presented by hybrid working arrangements.

At EMC we are currently working with one local authority to provide development for their line managers to support them in leading their teams effectively in a world of hybrid working arrangements.

Feedback from the work so far has been positive and may be of interest to other organisations in the region, as it can be tailored to specific organisational requirements.

The Drivers for Change

There are plenty of surveys, polls, research and theories around hybrid working which can all help when informing the way forward.

In an article this month from People Management ([available here](#)), a poll of 1,000 UK workers conducted by the Work Foundation and CMI stated that 88% of employees wanted to continue to work remotely at least 1 day a week.

The research also found that of the employees whose line managers were responsible for deciding their work arrangements going forward, 59% said they were comfortable asking their line manager and 54% also indicated that their line managers' support was the main reason why they were comfortable asking.

Similarly, in another article from People Management which featured concerns about discrimination arising from hybrid working ([available here](#)) experts referenced the role that HR has to play in ensuring line managers are prepared to deal with the new challenges. This included ensuring line managers were trained in what they needed to notice and pick up when leading remote and hybrid teams.

Responding to the New Demands

The support that EMC is providing to managers aims to do just that. Working with the authority in the context of their hybrid working guidelines, we devised a programme of support to assist managers in further understanding what it means to be leading a hybrid team and the most effective behaviours to achieve this successfully.

Managers attend two virtual workshops (3 hours each) followed by action learning sets. This helps managers to consider and understand what is needed, practise embedding it and keep it alive and moving for the new challenges they face.

Supporting Change & Resilience

The capacity to embrace change and support resilience are related themes that many individuals and organisations are looking to develop.

In addition to the support outlined above, we have previously provided workshops for managers and team-members in navigating change, coaching for line managers in leading change and supporting the resilience of individuals and teams.

If you are interested in any further information regarding this work or discussing how it can be tailored to meet the specific requirements of your organisation, please contact Lisa Butterfill at lisa.butterfill@emcouncils.gov.uk.

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 selection for redundancy

I have a bee in my bonnet about redundancy selection. When I started in employment law (back when there was a lot less of it and it was regarded as an easy subject to cover in a law degree) redundancy selection was straightforward. Either you just dismissed the people with the shortest service (Last in, First Out) or if you were really state-of-the-art you would use a matrix system. Redundancy criteria would be identified, and employees given a score under each of them. A league table would then be created with the number of redundancies required dictating the size of the relegation zone at the bottom. It was a bit rough and ready but there was a straightforward honesty about what the process was.

Nowadays it seems that organisations bend over backwards to treat redundancy selection as a recruitment exercise. Instead of deciding who to dismiss from their current role the question is who should be offered one of the new roles that have been created as a result of a restructuring exercise. Obviously, if that is what is really going on then that makes perfect sense. But my fear is that a lot of the time, the new roles that the organisation is recruiting for bear a striking similarity to the old roles that are being scrapped.

I have a number of problems with that approach. I'm not comfortable that someone should be dismissed on the basis of the answers they give in a job interview rather than an objective look at their performance in their current role. Some people are better at interviews than others and better at framing their skills and achievements in a way that scores points with an interview panel. Why would you focus entirely on the answers given and not look at the employee's actual record?

In the case of *Mental Health Care (UK) Ltd v Biluan & anor* (EAT 2013) the employer was so keen to ensure that their redundancy selection process was 'objective' that they had it conducted by the same assessment centre that they used in their recruitment exercises. All that mattered was how the employees performed in the assessment and no account was taken of what

the employer knew about their performance in their current role. As a result there were some surprising selections - which should have rung some alarm bells - but the employer simply trusted that the assessment was robust and objective. Two employees successfully claimed unfair dismissal – it was unreasonable of the employer to exclude from consideration their knowledge of the employees' actual performance in favour of their performance at the assessment centre.

It is generally accepted that a recruitment-based selection for redundancy will be fair if the roles that are being selected for are genuinely new, and not just a tweaked version of existing jobs. In *Morgan v Welsh Rugby Union* (EAT, 2011) two departments were amalgamated and the role of the head of each was abolished. A new post was created heading up the new department and both of the old heads applied for it. Selection was based on an interview process and the deciding factor turned out to be that the panel thought that one candidate had a much clearer vision for the future direction of the new department. The unsuccessful candidate claimed unfair dismissal. The EAT upheld the Tribunal's view that the dismissal was fair. In reaching its conclusion the EAT stressed that when a genuinely new post was being created, any selection of the most appropriate candidate would inevitably involve a degree of judgement rather than just an objective assessment of skills and experience.

The most recent case to deal with this issue is *Gwynedd Council v Barratt and others* (Court of Appeal, 2 September 2021). This involved a school closure where most of the staff were redeployed to a new school – on the same site as the old one. All of the staff at school 1 were told that they would be made redundant, but most of them were then recruited to equivalent roles in school 2 by the new board of governors. Two employees – both PE teachers – were not recruited however and successfully claimed unfair dismissal.

A crucial point in this case was that the jobs that the two PE teachers were applying for were not new roles – they were the essentially the jobs they were already employed to do – albeit under the aegis of a newly constituted school.



The Council argued that when school 1 closed it was inevitable that the teachers would be made redundant and that it had no power to influence or overrule the choice of school 2 as to who should be recruited. The Tribunal did not accept that and neither did the Court of Appeal. The local authority was the employer and it was up to the local authority to ensure that any dismissal was fair. The Tribunal found that it was unfair to make the employees in effect apply for their own jobs and the Court of Appeal upheld that finding.

The relationship between a community school and a local authority in the context of employment law is one of those topics that makes me feel slightly dizzy. It is far from straightforward, and the Tribunal EAT and Court of Appeal in this case have all decided to gloss over the difficulties and rely on the fact that the decision to close School 1 was taken by the local authority rather than by the board of governors. I'm not sure that quite covers the issue of whether the local authority had the power to direct the governors of School 2 to take on the staff from school 1. The point perhaps is that the local authority decided to reorganize its schools in this way and cannot rely on that reorganisation to avoid responsibility for two teachers being made redundant with no opportunity to challenge the basis on which they had been selected.

But leaving aside that complication, the Tribunal's approach to the selection for redundancy tells us something about what makes for a fair selection. It isn't really about whether there is some sort of interview assessment. What matters is that there is clarity about the basis on which the selection is being made and some chance for the employees to challenge that. In the Gwynedd Council case there was a lot of focus placed on the lack of an appeal mechanism, but the Court of Appeal confirmed that a specific right to appeal against a redundancy selection is not always necessary.

There are very few hard and fast rules in unfair dismissal – it is a matter of the Tribunal making an overall assessment of how reasonable the employer has been. However, the more a selection process resembles a recruitment exercise the more work the employer will have to do to persuade the Tribunal that that is a fair approach. That will usually involve showing that the roles being selected for are genuinely different from the roles being made redundant - so that the employee's track record in

the current role is not a reliable indicator of their likely performance in the new one.

More information can be found on Twitter: [@daznewman](#)

National Developments

Pay Negotiations

You will no doubt be aware that the National Employers improved their pay offer to employees on Green Book terms and conditions for a 2021 pay award. A copy of the offer which was put forward as a final offer, can be accessed here: [here](#)

The unions balloted their members on the offer, recommending rejection and the results of the ballots were issued earlier this month. The outcome of each ballot was to reject the offer by a majority. The percentage votes in favour of rejecting the offer were:-

- Unison - 79%
- Unite – 81%
- GMB – 75%

The unions asked for negotiations to be re-opened and for an improved offer and are making plans to consult their members on taking industrial action.

The Employers' met on 19th October to consider the situation and agreed by a majority to re-affirm as full and final the pay offers made previously to Green Book employees, as well as Craftworkers, Chief Officers and Chief Executives. We distributed a circular to councils informing them of this development on the day and a copy can be accessed [here](#).

The Unions are now in the process of balloting their members on taking industrial action. It is therefore unlikely that there will be an outcome on the national pay award for some time.

Councils who are party to the national collective agreement will not be able to go ahead and make a payment of the offered award as this would be acting outside of a collective agreement and could be criticised by local auditors as making unnecessary payments.



National Living Wage Increase

A key announcement as part of the Chancellor's budget statement this week was that the National Living Wage will increase to £9.50 from 1st April 2022.

Pay for Political Assistants

In England there is a maximum pay level set by Regulation for a Political Assistant appointed by a council under s.9 of The Local Government and Housing Act 1989.

The Local Government (Assistants for Political Groups) (Remuneration) (England) Order 2021 will take effect from 6 December 2021 and will link the maximum pay of Political Assistants in England to point 38 of the national pay spine for Local Government Services (Green Book). The salary at this spinal point is currently £41,881, with the pay award from 1st April 2021 pending.

The Government has also issued non statutory guidance on political assistants for local authorities in England who employ, or are considering employing, local authority political assistants.

National/Regional COVID Workforce Update

We continue to work with our colleagues at national level and the other regional employers' organisations to provide you with updates on workforce issues which are now on a monthly basis.

The link to October's update can be accessed here: [Workforce COVID Update Issue 35](#) Given the number of changes that were announced since the previous update, this was more of a bumper edition and included items on:-

- COVID-19 General Update
- COVID-19 certification Update
- Workplace Ventilation Guidance
- Fuel crisis / HGV driver shortage
- Fake vaccination consent forms in Schools
- Teachers' Pay 2021
- Adult social care funding and reform
- Mandatory vaccines for care homes: employment issues
- Political Assistant Pay Update
- Consultation on making flexible working the default
- Council Support for workplace equalities
- Apprenticeship Incentives Extended until January 2022

Menopause at Work

On 18th October it was World Menopause Day, providing a timely reminder and helping to increase awareness of the issues faced by women and the implications for colleagues and employers. With women making up a significant proportion of the local government workforce (75%), it is important that as employers we can support staff who are experiencing the effects of the menopause.

ACAS has recently published guidance on the menopause at work which can be accessed [here](#)

Apprenticeships

Extension of Apprenticeship Incentives

Earlier this month the Government announced that the Apprenticeship Incentives have been extended for another four months. The incentives were first introduced in August 2020, and have been worth £3,000 per new apprentice since April 2021. They were due to expire on 30 September 2021, but have now been extended for a further four months.

For apprentices that started their employment with your council between 1 April 2021 and 30 September 2021 AND began their apprenticeship before 30 November 2021, councils continue to have until 30 November 2021 to claim their incentive payment.

For apprentices that start their employment with your council between 1 October 2021 and 31 January 2022, councils will be able to claim their incentive payment once applications open in January 2022.

Payments will continue to be issued in two instalments after 90 days and 365 days of the apprenticeship respectively.

More information is available here: [government guidance](#)

