



# HR in the East Midlands

April 2022

We hope you had a lovely break over Easter and hopefully enjoyed a bit of sunshine! This month we are highlighting the benefits of networking and exchanges and the value of collaborative working. We also provide a round-up of national news. Darren Newman's article is on the importance of the correct comparator pool being used for indirect discrimination cases.

## Feedback from the Exchange on Managing Absence in the new era of Covid

This week's Exchange was a great example of the value of sharing information and approaches – particularly when previously prescriptive rules and guidance are replaced by loose and flexible guidelines. There was a high level of interaction and discussion from the 30 participants.

Phil Bundy from the LGA was on hand to answer questions from an employment law perspective and the feedback from the event was that it was really useful.

The revised national FAQs are on our webpage and we will be adding to the page soon with information and further helpful links that came from the Exchange meeting. [link to webpage](#)

## Equality, Diversity and Inclusion Network, 18th May

The network will launch on 18<sup>th</sup> May 2022 as a virtual network meeting starting at 2pm for those leading the EDI agenda. This first meeting will allow the group to decide how it wants to operate and identify some key areas of work and objectives for the network. To register to attend please visit [here](#) and book a place.

## East Midlands Virtual Information Exchange – “Grow Your Own”

Just a reminder that EMC have arranged a virtual information exchange on **6<sup>th</sup> May from 10.00am-11.30am** on the topic of “Grow Your Own”. The session will include case studies from one council where apprenticeships have helped solve a recruitment crisis and from Ashfield District Council on their experience of growing their own **Planners**. There is still time to take part in this exchange by booking your place [here](#).

## Projects with Local Authorities

During April, EMC has supported individual councils with:-

- Chief Executive appraisal facilitation
- Coaching
- Investigation support

**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

## Local Government Apprentice of the Year 2022

25 May – 26 May

We would welcome your engagement and support, to encourage apprentices to sign up for this event. The activities participants will undertake during this event focuses on some of the core principles around the 21st century public servant key model.

It is an opportunity to “Build the Future”, helping individuals develop the skills and knowledge to build a successful and rewarding career and local government employers to build a workforce with future ready skills.

Apprentices will be assigned to teams of up to 10 apprentices and each team will take part in a variety of activities aimed to develop successful workplace behaviours, linked to a range of apprenticeship Standards, over day 1 of the event.

Apprentices are invited back for the second morning for an opportunity to celebrate together and crown our winners, along with a special guest speaker. We will be extending this invite to line managers of apprentices taking part too, so they can celebrate with us.

But the event doesn't just stop there. After the event, participants will receive an individual report with their scores for each activity and an Employer Checklist with suggested questions for line managers to use with their apprentices to help shape a discussion to link the events activities undertaken to their workplace role and to the Knowledge Skills and Behaviours covered in their apprenticeship standard.

Did you know, the overall event winner will be awarded **£500** in Love2Shop vouchers, **£250** to the runner up and winning team will receive **£30** each.

For more information and to register a place visit [here](#).

### Introduction to Neurodiversity, 22 June 2022

EMC is hosting a 90-minute virtual workshop 'Introduction to Neurodiversity'. Neurodiversity is something that exists within every workplace environment, yet it can be something that we have little understanding of. Having an increased knowledge around the subject and knowing the best way to support colleagues experiencing neurodiversity can make a massive difference to organisations and increase employee satisfaction and team performance.

In this introductory session we will be introducing you to the idea of neurodiversity, what it is, and what the common conditions are that people experience. We

will also look at ways in which you can make simple adjustments to better support people and enable them to be their most effective selves. At the end of the session, you should have an increased knowledge about neurodiverse conditions and the ways to best support someone.

This session is suitable for anyone throughout your organisation, but is particularly useful for those working in team leading positions, learning and development teams and human resources. To book visit [here](#).

### Public Speaking and Media Communication Skills workshop, 22 June 2022

EMC is hosting an exclusive half day workshop on public speaking and the media. Places will be limited to only 4 for this workshop, to enable delegates attending to maximise from the learning environment and the practical activities. Delegates will benefit from a highly experienced trainer on the subject of public speaking and the media, a former television presenter. For more information visit [here](#).

### Simplifying Coaching - Having more transformational conversations by doing less

The East Midlands Coaching Network is hosting a Coach development session on 7 June. Drawing from what we learn about transformation from science, and the ICF Core Competencies, the facilitator will do a live coaching demonstration, and share some simple tweaks that will make transformation more likely to happen in those you coach.

For more information and to register a place visit [here](#).

### Leadership Development Support 2022-23

In May's HR Bulletin we will focus on our Leadership Development offer, showcasing our plans for a new Master Class series for Heads of Service and our new blended ILM 5 Award in Leadership. Along with details of our new workshops on; Self-leadership during difficult times; Building resilient teams and Strategic performance management.

### 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 the importance of the correct comparator pool for indirect discrimination cases.

Indirect discrimination is a simple enough concept to grasp in its essentials. It's what happens when an employer imposes an unjustifiable policy that causes a particular disadvantage to a specific group. So requiring employees to work full time can be indirect sex discrimination because women are more likely than men to need to work part-time in order to accommodate their child-care needs. We have seen in the recent case of **Dobson v North Cumbria Integrated Care NHS Foundation Trust** that the EAT considered this 'childcare disparity' to be so well established that there was no need for a Tribunal to hear evidence on the point. Instead it should simply take 'judicial notice' of the fact that women were more likely than men to have childcare responsibilities affecting their availability for work.

When you drill down into specific cases however, things get rather more complicated. It is one thing to accept that in general women will be disadvantaged more than men by being required to work full time – but that is not enough to win an indirect discrimination claim. For that you need to show that in the particular case being complained about the employer has done something that would put women at a particular disadvantage when compared to men.

That raises the question of which women and which men we are talking about. Do we mean women and men considered globally or across the country? Do we mean women and men employed in a particular industry? Or by the particular employer? Or at one specific workplace? The groups of women and men we look at when deciding whether or not there has been indirect discrimination is referred to by lawyers as the 'pool for comparison' and – rather surprisingly – there is no clear answer.

The nearest the courts have come to telling us how to construct the right pool for comparison comes in the Supreme Court decision of **Essop v Home Office (2017)** where Lady Hale explained that the purpose

off the pool for comparison is to test the effect of the 'provision criterion or practice' (PCP) that is alleged to be discriminatory. That means looking at those people to whom the PCP is being applied and seeing the effect that it has. That sounds straightforward – but a recent case shows how tricky it can be.

In **Allen v Primark Stores** (EAT, 2022), Ms Allen was a manager at a Primark store in Bury. She was returning to work after maternity leave and requested a flexible working arrangement to fit in with her childcare needs. Her employer was happy to go along with much of her request but a sticking point was reached over the issue of late working on a Thursday. The store's position was that they did not have sufficient managers available to avoid the need for her to be available until about 8.30pm on a rota basis. No resolution could be found and Ms Allen eventually resigned claiming indirect sex discrimination.

Her claim was dismissed by the Tribunal on the basis that she had failed to show that the requirement to work on the late shift on a Thursday evening put women at a particular disadvantage. The Tribunal considered who was affected by that requirement and concluded that it was departmental managers and trainee managers who potentially had to work that shift. There were five people who fitted that description, including Ms Allen herself. Three of them were men and two were women. The other woman had no particular problem with working late on Thursdays, but two of the men found that it interfered with their childcare arrangements and the Tribunal found that the requirement caused them a disadvantage. Since two men and only one woman were disadvantaged by the requirement to work late on Thursdays there was no particular disadvantage caused to women and so there was no discrimination.

The EAT held that this was the wrong pool for comparison. The Tribunal had asked itself who might be asked to work late on Thursdays but had ignored the fact that the two male managers with childcare responsibilities already had informal arrangements which meant that while they might be requested to help out with Thursday shifts occasionally, they were not obliged to do so. In Ms Allen's case the PCP that she was relying on was that she was required to be available. Since that PCP was not applied to the two



managers with an informal arrangement, they did not belong in the pool.

The EAT did not say what the proper pool for comparison was – they sent the case back to the Tribunal to decide the issue afresh. It seems unlikely that the best pool for comparison in this case consists of just three people. The fact that the one man remaining in the pool suffers no disadvantage while 1 of the two women does hardly means that the requirement to work late on Thursdays adversely affects 50 per cent of women and zero per cent of men. Using that limited pool does not seem to be a good way of testing the discriminatory effect of the PCP. It might make more sense for the Tribunal to look more widely. The requirement to work a late shift is one applied across employer's stores in the UK so it may be that the Tribunal will have to look at the impact of the Thursday late shift across a wider group of managers beyond a single store in Bury.

This all strikes me as rather unsatisfactory and over complicated. We all know that insisting on managers working late will – on average – adversely affect women more than men. It may not do so in a particular workplace where the numbers are small, but indirect discrimination is supposed to be concerned with the overall impact of a particular practice and there is no real doubt about what the overall impact of insisting on employees late will be.

What has to be remembered is that however great the impact, there will be no discrimination if the employer can show that the PCP in question is a proportionate means of achieving a legitimate aim. That is surely the key issue that should be the focus of a case such as this. Why did the employer need the employee to agree to be available for a late shift on Thursday and, assuming there was a good reason, was there some other way in which it's legitimate aim could be met?

Certainly an employer faced with a request for part-time working could be lulled into a false sense of security in thinking about the pool for comparison. It may be that in a particular department all the other women have no issue with the working pattern under scrutiny. But that does not mean there is no discrimination. Depending on how the employee frames the PCP when bringing a claim, the pool may turn out to be much wider than that. Ultimately the employer cannot control how the

PCP is put and what pool for comparison the Tribunal adopts. What it can control is whether or not it can justify its approach. The best defence against an indirect discrimination claim is to make a genuine effort to accommodate flexible working requests and only turn them down outright when there is no realistic alternative.

## National Developments

### Updated Green Book

The Green Book has been updated. The revised version includes the payscales and allowances for 2020 and 2021, refreshed JE Scheme Guidance Notes at Part 4.1 (issued previously on 3 August 2020) and the updates to Part 4.12 (issued previously on 28 June 2021).

The covering circular, the new version and a version with tracked changes can all be accessed [here](#).

### Unite's Position following Ballots

You will recall that Unite took a disaggregated approach to ballots for industrial action in relation to the 2021 pay offer. This week Unite wrote to the National Employers regarding its position on the national pay negotiations for 2021. A copy of the letter can be accessed [here](#).

The matter will be discussed at the next meeting of the Employers' Side of National Joint Council which takes place on Monday 9<sup>th</sup> May.





## Apprenticeships

### More time to claim Apprenticeship Incentive Payments

The government announced this week that you have five more days to get your claims in for Apprenticeship Incentive payments.

Employers can apply for a payment of £3k for new apprentices with an employment start date from 1 October 2021 to 31 January 2022. The application deadline to claim these payments has now been extended from 15 May 2022 to 20 May 2022.

Further information can be found [here](#).

### Apprenticeship Newsletter – April 2022

The latest LGA apprenticeship newsletter can be found [here](#). It covers developments in the world of apprenticeships, including:-

- Local Government Apprentice of the Year 2022 – 25<sup>th</sup> May 2022
- LGA Apprenticeships Support Offer 2022
- Level 4 Apprenticeship Standard on Data Protection and Information Governance
- Links to recent webinars
- T Levels and Local Government – A Short Survey
- IFATE Apprentice Panel Recruitment

### LGA Programme of Webinars on Apprenticeships

Set out below are details of the webinars being offered as part of the national programme. As well as information on the events, we also provide links so that you can book a place. If any of the links don't work for you, simply copy and paste the text of the link, press enter and you should be taken to the registration page. Any problems registering, please email [info@spark.org.uk](mailto:info@spark.org.uk) and the LGA will do what they can to help you sign up.

### End point Assessment Good Practice

*Wednesday 22 June 2pm – 3.30pm*

This session provides an update on the impact of changes in end point assessment for degree apprenticeships and offers latest guidance and successful practice. This will help council apprenticeship leads to support their line managers and apprentices to understand and prepare for EPA, and ensure they are getting the best service from their provider and EPAO. We will hear from Councils who are successfully managing apprenticeship achievement and hear their tips for working with providers and staff to embed end point assessment into apprenticeship delivery.

**Book here:**

<https://attendee.gotowebinar.com/register/9063252779850489613>

### Schools Update

*Wednesday 29 June 2pm – 3.30pm*

This session will provide the latest update about schools apprenticeships, including the development of some new standards for the schools sector.

**Book here:**

<https://attendee.gotowebinar.com/register/2897615982771226127>

### Apprenticeships with Impact – Specialist High-Value, Low Volume Apprenticeships

*Wednesday 6 July 2pm – 3.30pm*

There are a small number of apprenticeships that councils may only need in small numbers but are of great importance to successfully deliver some of their more specialised and niche services. We will show case successful apprenticeship delivery and the impact that these roles can have on council objectives combined with the latest on take up and delivery models for councils yet to adopt these apprenticeships. **Book here:**

<https://attendee.gotowebinar.com/register/1294220166218307342>



## **ESFA Funding Rules – Overview for Apprenticeship Leads**

*Thursday 4 August 10am – 11.30am*

This is the annual webinar explaining the latest changes to the funding rules and what they mean. This will be from the perspective of councils as employers – a separate session is being held for councils that are Employer-Providers (see below). **Book here:**

<https://attendee.gotowebinar.com/register/5784446433660364814>

## **ESFA Funding Rules – Overview for Apprenticeship Leads for Employer-Providers**

*Thursday 4 August 2pm – 3pm*

This is our annual webinar explaining the latest changed to the funding rules and what they mean, focused on those councils who are Employer-Providers.

**Book here:**

<https://attendee.gotowebinar.com/register/5784446433660364814>

