



# HR in the East Midlands

April 2023

With many councils having elections next week, this month's bulletin includes EMC's councillor development offer, informed by our councillor development network and the Regional Employers Board. Darren's article looks at the new guidance from ACAS on adjustments for mental health and whether there is clarity on what "reasonable" means. The national news section includes an update on the timings for the results of unions' ballots on the national pay offer.

## Getting the Best from Occupational Health

Getting good occupational health advice is key to supporting the wellbeing of employees and to helping managers make the best decisions within a range of employment issues and procedures.

A common concern we hear from councils is that occupational health reports often only reflect the employee's view, don't add to the information already known, or fail to provide clear advice.

We are therefore finalising arrangements for an event that will look at how to get the best from occupational health. Details will be circulated as soon as they are confirmed. You can register your interest with Suzanne at [suzanne.boulty@emcouncils.gov.uk](mailto:suzanne.boulty@emcouncils.gov.uk).

We are also currently conducting a **survey on your views and experiences of your occupational health providers**. If you've not seen the information request, please contact Suzanne. Responders will receive the results as a priority, and we will share key findings at the event.

## We are Recruiting!

EMC is increasing our capacity to support councils on the wide range of workforce issues that the sector is facing and have a vacancy for an HR/L&D Manager, with a focus on HR. We work flexibly and take full advantage of hybrid arrangements.

The closing date is 2<sup>nd</sup> May, so the rainy bank holiday will be a great chance to brush off your CV and develop your career by applying. Full details are here: [East Midlands Councils Jobs \(emcouncils.gov.uk\)](https://emcouncils.gov.uk/jobs) and for an informal chat, email Sam at [sam.maher@emcouncils.gov.uk](mailto:sam.maher@emcouncils.gov.uk).

## Projects with Local Authorities

During April, EMC has supported councils with:-

- Mediation
- Advice for a harassment/discrimination appeal
- Coaching

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

[Sam.Maher@emcouncils.gov.uk](mailto:Sam.Maher@emcouncils.gov.uk)

[Lisa.Butterfill@emcouncils.gov.uk](mailto:Lisa.Butterfill@emcouncils.gov.uk)

# Learning & Development

## Councillor Development Programme 2023

We have designed a regional councillor learning and development programme to complement the in-house training provided for councillors following the elections.

The link to the programme brochure which includes full details on each event, including how to book is here:

[Councillor Development 2023 - 1 \(pagetiger.com\)](https://www.pagetiger.com/councillor-development-2023-1)

For any further information or questions on our councillor development offer, please contact

[lisa.butterfill@emcouncils.gov.uk](mailto:lisa.butterfill@emcouncils.gov.uk).

## Support for Coaching in the Region

There has been a steady increase in the number of councils joining the East Midlands Coaching Network. The Network supports its member organisations to access quality, reciprocal coaching. Coaching masterclasses are also provided to support network coaches' CPD and this year the topics will include: Coaching for Neurodiversity, Coaching for Confidence and Change, Coaching for Wellbeing and How to be Both Supportive and Challenging in a Coaching Relationship. Further information including dates and costs will follow shortly.

## Discounted ILM Coaching Qualification Training

We are also pleased to be able to offer the following ILM Coaching Qualifications through Coaching Focus at a discounted rate. **The next virtual programme starts on 9-10<sup>th</sup> May.**

- ILM Level 3 Award in Effective Coaching **£1645.00 + VAT** (instead of £1895) + ILM Registration fee (**£115**)
- ILM Level 5 Certificate in Effective Coaching and Mentoring **£1995.00 + VAT** + (instead of £2295) + ILM Registration fee (**£175**)
- ILM Level 7 Certificate for Senior Level Coaches and Mentors **£2545.00 + VAT** + (instead of £2995) + ILM Registration fee (**£235**).

For full programme information please visit here:

[coaching-qualifications-23](https://www.coaching-qualifications-23). To book please contact

[lisa.butterfill@emcouncils.gov.uk](mailto:lisa.butterfill@emcouncils.gov.uk)

## Equality Diversity & Inclusion Network (EDI)

The regional EDI network, launched last year, was a welcomed by participants who wanted the opportunity to share information and approaches on how to make progress with equality, diversity and inclusion as employers and service providers/community focused organisations.

We've arranged the next EDI network meeting to take place on **Tuesday 13<sup>th</sup> June** at 10.00-11.30am and will be held via MSTeams.

Existing network members have been contacted with information about the meeting, but if you would like to receive a calendar invitation then please email Sam at [sam.maher@emcouncils.gov.uk](mailto:sam.maher@emcouncils.gov.uk)

## Local Government Apprentice of the Year 24 – 25 May 2023

There is a final chance to book your apprentices to participate in the Local Government Apprentice of the Year 2023. Bookings close on **Wednesday 3<sup>rd</sup> May**.

It is a virtual event, open to current level 2 or 3 apprentices (or if they have qualified within the 12 months from May 2022 – May 2023) and provides a unique opportunity for learning, networking and showcasing skills, expertise and initiatives, working in virtual teams. To book and see further information about the event, please use the following link:-

<https://www.local.gov.uk/local-government-apprentice-year-2023>

You can hear from apprentices who took part in the event in previous years, by viewing two videos where they describe their experiences – see the links below:-

Video 1 - <https://youtu.be/RtzkNMEi4VU>

Video 2 - [https://youtu.be/prjceiVS\\_0M](https://youtu.be/prjceiVS_0M)

If you have any questions about the event, please email [es@eelga.gov.uk](mailto:es@eelga.gov.uk)



## In Deep with Darren

This month, Darren Newman looks at reasonable adjustments for mental health, with a focus on what “reasonable” means from a legal perspective, and whether there is greater clarity on this for employers from ACAS’s new guidance.

One of the most difficult employment law queries to deal with is the extent of the duty to make reasonable adjustments. The law is very clear on when reasonable adjustments need to be made but almost silent on what the scope of a ‘reasonable’ adjustment might be. The test of reasonableness is not the same as for unfair dismissal, where the Tribunal asks whether what the employer has done falls within a range of reasonable responses. It is a much stricter test than that. If the Tribunal thinks that it would have been reasonable to make the adjustment, then that is enough – the employer will be liable.

The issue is particularly tricky when dealing with disabilities related to mental health. The adjustments required for many physical disabilities – adaptive equipment, adjustments to premises etc – can be objectively assessed in terms of their cost and impact. With mental health issues, however, the level of adjustment needed to allow the employee to stay in work can be difficult to gauge. Good employers will want to be supportive of employees with mental health issues and flexible in terms of adjusting working hours and the circumstances in which work is done. They are very much encouraged to take this positive approach by new Acas guidance<sup>1</sup> on making adjustments for mental health published earlier this month.

The guidance does not have the status of a Code of Practice and it does not create any legal obligations. But it is likely that Tribunals will pay some attention to it when deciding reasonable adjustment cases. Generally,

that shouldn’t cause employers in local government too much of a problem.

By and large the guidance stresses the importance of dialogue and the need for employees and employers to agree the best way forward. The examples it gives of reasonable adjustments are also the sort of things you would expect to see: reviewing responsibilities, being flexible with deadlines, agreeing a ‘preferred communication method’ to reduce anxiety. I confess that I raised my eyebrows when I saw that one example being offered is ‘providing reserved parking to reduce the stress of commuting’. There will of course be circumstances in which that is appropriate. But I know how difficult and contentious parking spaces can be – and there is no doubt that an increasing number of employees will now be pointing at this guidance and claiming that it entitles them to a reserved parking space.

The issue I have with the guidance is that it doesn’t grapple with the difficult trade-offs that employers face when making adjustments for mental health disabilities. It speaks optimistically of the employer and employee sitting down and agreeing a way forward but does little to acknowledge that employers face genuinely difficult decisions. We know, for example, that an employer may be required to reduce the workload on an employee who has a disability that makes them less able to cope. But how much of a reduction can be made before it becomes unreasonable? To what extent is the employer expected to ask other employees to pick up the slack?

The guidance suggests that the employer should think about what the impact of an adjustment might be on the employees’ ability to do the job ‘to a satisfactory level’ but doesn’t address how the employer should judge what a satisfactory level would be. It also suggests considering what the impact of the adjustments might be on the rest of the team – but doesn’t give any guidance on what kind of impact it might be reasonable to expect them to absorb.

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<sup>1</sup> <https://www.acas.org.uk/reasonable-adjustments-for-mental-health>



There are, I think, two main reasons why Acas does not grapple with these issues. The first is that Acas represents the views of both employers and employees – it is entirely neutral. That means that its guidance and advice can often be rather anodyne and bland. It can't take a stand on controversial issues because its internal structure will always push it towards positions on which there is a consensus. The second reason is that in legal terms it is far from clear what the answers to these questions are.

The duty to make reasonable adjustments is a form of positive action. Employers are expected and required to do things for disabled employees that they would not consider for employees who are not disabled. While win-win solutions can certainly be found to many issues encountered by employees with mental health disabilities, the duty to make reasonable adjustments is not confined to cost-neutral measures. Employers are expected to be prepared to incur a cost in making reasonable adjustments – including accepting lower productivity from a disabled employee or additional costs in terms of providing them with support. In deciding how much of a cost they are prepared to absorb, employers have next to no authoritative guidance as to what is reasonable. This guidance from Acas does not change that.

### **So what approach should employers take?**

This is one of those questions where lawyers are not much help. Employers simply have to decide where they think it is fair to draw the line and be prepared to defend that position if challenged. We should remember that the purpose of the Equality Act is to provide a level playing field and to make sure that disabled people are not prevented from playing a full part in the workplace by unreasonable barriers that are placed in their way. Flexibility and an open mind is needed to achieve that. But so too is a willingness to decide that an adjustment should not be made if the impact on other employees or the work being done is too great.

The result of a reasonable adjustment should not only be that an employee who would otherwise be excluded from the workplace is able to stay – it should also be an employee doing a worthwhile job that is fair on their colleagues and makes commercial sense from the employer's point of view.

## **National Developments**

### **National Pay & Conditions**

#### **Union Ballots on the National Pay Offer for Local Government Services (Green Book) Staff**

Here is a reminder of the timetable and approach of the unions' ballots in relation to the National Employers' full and final pay offer.

GMB's consultative ballot on the offer will close today (28th April). Unite's consultative ballot will close next Monday (1st May). Both unions were recommending their members to vote to reject the offer.

GMB has said that it will not announce the result of its ballot until after its National Committee has met, next Friday 5th May. Unite has said its result will be announced next Wednesday 3rd May. Because both ballots were consultative, neither union is obliged to reveal the turn-out figure.

UNISON will be starting its formal ballot for industrial action on 23rd May and this will close on 4th July. UNISON will be balloting on a disaggregated basis, which means strike action could be taken at each individual council/school where a turn-out of over 50 per cent is secured (if members vote in favour of strike action).

UNISON is required to inform each individual employer of the number of votes for/against the offer, plus the turn-out figure. However, it does not have to provide national figures.

**It would be appreciated if councils could inform EMC of the results when they are received, so that we can map out the response overall and help target any advice/support and enable councils to share approaches.**

If UNISON meets the threshold for lawful industrial action to take place, its timetable means strike action may not start in councils until August and in schools from September, more than six months after the employers' full and final offer was made.





## Soulbury Pay Negotiations for 2022

The National Employers remain in dispute with the Staff Associations on pay for Soulbury officers for 2022.

Discussions are ongoing and it is hoped that a pay settlement can be reached. Further details are available through the following link: [Soulbury 2022](#)

## Schoolteacher Pay

Following negotiations hoping to resolve the dispute over the **2022/23 pay award**, the [Government's pay offer](#) was rejected following a ballot of Trade Union members. The National Education Union announced two further strike days; 27 April and 2 May. NASUWT's intention is to re-ballot staff. NAHT's are discussing balloting members and the Association of School and College Leaders will now hold a strike ballot during summer term.

The process to review teachers' pay for **2023/24** is continuing through the independent pay review process (School Teachers' Review Body's - STRB). The LGA published the National Employers' Organisation for School Teachers (NEOST) written evidence to the STRB January 2023 and attended the STRB oral evidence session on 21 April 2023. A copy of the NEOST evidence can be accessed here: [National Employers' Organisation for School Teachers written evidence to the STRB January 2023](#)

The next step is for the final STRB report, expected to be with Government by the end of May 2023. The Government is expected to publish the STRB report early summer, with a pay decision announcement in September 2023.

## Statutory Week's Pay and Tribunal Award Limits

The [Employment Rights \(Increase of Limits\) Order 2023 \(SI 2023/318\)](#) increases the limits applying to various tribunal awards and other amounts payable under employment legislation. From 6<sup>th</sup> April 2023, there was an increase to the maximum amount of a week's pay for the purpose of calculating a redundancy payment and compensation for unfair dismissal to £643; and the maximum amount of the compensatory award for unfair dismissal, which increases to £105,707. The Order applies where the event that gives rise to the entitlement to the payment occurs on or after 6 April 2023.

## T Levels Newsletter

In the April edition of the T Level Newsletter there is information details about a new employer support fund from the Department for Education, upcoming webinars, the LGA's T Level toolkit and the DfE's employer portal to support your organisation through the T Level process. Click [here](#) to view the newsletter.

## Apprenticeship Update

Last month the ESFA published an early draft of the 2023/2024 Apprenticeship Funding Rules for consultation, which closes today (28<sup>th</sup> April). The LGA ran a webinar on 13<sup>th</sup> April to go through the changes and slides and a recording from this will be available from the LGA's K-Hub. The new rules include some flexibilities and have combined employer, provider and employer/provider rules into one document.

Further information on the funding rules and a summary of the changes can be accessed through the links provided below:-

Funding Rules 2023/2024 are here:-

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1147084/Apprenticeship\\_funding\\_rules\\_2324.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1147084/Apprenticeship_funding_rules_2324.pdf)

Summary of Changes is here:-

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1147578/Apprenticeship\\_funding\\_rules\\_2324\\_summary\\_of\\_changes.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1147578/Apprenticeship_funding_rules_2324_summary_of_changes.pdf)

