



# HR in the East Midlands

August 2022

For those who employ craftworkers, it was a relief that agreement was reached this month on the 2021 pay agreement. This is covered in our national news section, along with details the 2022 offer to craftworkers and other updates on pay. Darren Newman gives his pragmatic take on the implications when employees who are subject to disciplinary proceedings resign. As thoughts turn to planning for Autumn (sorry!) it is timely to outline events and support available. This includes a new offer for development on conflict management and mediation and the Special Interest Groups being set up to make progress on Equality, Diversity & Inclusion.

## Regional Employers' Board

Following EMC's AGM, appointments have been made to the Regional Employers Board. The Board comprises of 15 councillors reflecting the political make-up of the East Midlands. For a second year, the Chair is Cllr Kate Foale of Nottinghamshire County Council, with Cllr Mick Barker of Derby City Council and Cllr Gale Waller of Rutland County Council both continuing as Vice-Chairs. Other Board Members are from Chesterfield BC, South Derbyshire DC, Mansfield DC, Derbyshire CC, Rushcliffe BC, Erewash BC, Harborough DC, Lincolnshire CC, North Northants Council and South Kesteven DC.

The Board will meet on 8<sup>th</sup> September and will then join Joint Trade Union representatives to form the Regional Joint Council.

## Joint Working to Progress Equality Diversity & Inclusion

In last month's bulletin, we set out the special interest groups that are being set up from the Equality, Diversity & Inclusion (EDI) network. The 6 groups will provide the opportunity to join with others to share information, approaches and make progress on the following:-

- Leadership and personal accountability group
- Disability confident accreditation
- LGA Framework
- Effective Employee Groups and Champions
- Equality Impact Assessments and Policy Development
- Recruitment and selection

There is still time to register your interest in being part of any or all of these groups. Please email Kirsty at [Kirsty.lowe@emcouncils.gov.uk](mailto:Kirsty.lowe@emcouncils.gov.uk) The next meeting of the EDI network will be 12<sup>th</sup> October 2022.

## Projects with Local Authorities

During August EMC has supported councils with:-

- Interim HR Management
- Assessment centre design and delivery
- Advice on JE and Pay for Director roles

**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

## High Impact Leadership, ILM Level 5 Award in Leadership and Management

Due to the popularity and demand for our ILM Level 5 Award in Leadership and Management programme starting in September 2022, EMC is pleased to offer an additional programme. Dates for the new programme will be available shortly, but if you would like to be notified of these as soon as they are available, please contact [Kirsty.lowe@emcouncils.gov.uk](mailto:Kirsty.lowe@emcouncils.gov.uk).

It is an accredited leadership development programme that will take place with a combination of face to face and interactive virtual workshops.

### The objectives for the programme are to:

- Enable delegates to lead, coach and manage their teams and have a positive impact on those around them.
- Give delegates a set of behaviours to increase employee engagement

It will require delegates research and implement a business improvement project which will give your organisation a return on investment of five times the cost of their place on this programme.

### Who is this aimed at?

All levels of leadership development require some fundamentals: situational leadership, leadership behaviours, personal effectiveness, emotional intelligence and communication. This programme builds on those, with tips and tools that delegates can implement straight away.

The ILM 5 Award in Leadership and Management is recognised throughout all business and public sectors in the UK. There are two assignments; the first is an evaluation of your leadership. The second is a business improvement project, which will generate a return on investment.

### Course information

Details of the new course dates will be available from our website [here](#) shortly.

Please note that the programme starting in September is now fully booked.

# Mediation

Mediation one of the services offered by East Midlands Councils to local councils and the wider public and third sector. Over the past year we have seen an increase in the number of mediation requests we have successfully supported. As an independent organisation, our input has been valued in helping to resolve conflict.

EMC can offer qualified and independent mediators who will facilitate the process with the aim of helping the individuals to reach a mutually acceptable agreement to resolve their problems. We can also provide advice to organisations in how to integrate mediation into their resolution processes. For more information on our mediation support visit [here](#)

As part of our offer, we are in the process of developing a wider programme of support. An outline of what will be included is provided below:-

Handling Conflict	• A skills workshop designed to support managers with handling conflict.
Mediation Skills for Managers	• Training to support managers to be aware of skills used in mediation and knowing how and when to use these.
Accredited Mediation Course	• An accredited mediation skills programme for those wanting to become qualified workplace mediators.
Mediation - Refresh and Supervision	• Support for trained mediators to refresh skills and access supervision for continuing development.

### Contact Details

For further information about any of our work please contact the team:-

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## In Deep with Darren

Many of us will have come across the situation when an employee who is subject to disciplinary proceedings resigns. This month, Darren Newman considers the implications of this for employers, following an ET case involving a claim post-employment discrimination.

I am often asked whether an employee facing disciplinary proceedings should be allowed to resign rather than be dismissed for gross misconduct. I answer the same way I almost always answer employment law questions: “it depends”.

Of course, an employer does not need to ‘allow’ an employee to resign. Employees are entitled to resign any time they like by giving the notice required under their contract. What the question is really getting at is whether or not the employer should still proceed with the disciplinary process even if it is confirmed that the employee is leaving anyway.

I generally take a pragmatic view of this. If an employee has chosen to leave, I don’t think there is usually much point in going to the trouble and expense of disciplinary proceedings. At most the employer would cut short the employee’s departure by a few weeks, and it is often better for both sides to just let the notice period run its course with the employee not being required to come back into work.

It is of course very important that this is the employee’s choice. Suggesting to the employee that a resignation would avoid the difficulties caused to them if they were to be dismissed would risk a finding that they were essentially forced out. A Tribunal might well hold that to be a dismissal and it would almost certainly be unfair. But in general, the employee resigning means that the employer no longer has to justify the disciplinary proceedings or any decision to dismiss that might have resulted. The resigning employee is actually doing the employer a favour – assuming you are not sorry to see them go.

There are exceptions of course. If the resignation arises from a safeguarding concern, then it is almost always best to proceed with the disciplinary process, in so far as possible, so that clear findings can be made

about what actually happened. That might be important should a request for a reference be made in the future and it might also be necessary for the purposes of making a referral to the Disclosure and Barring Service.

There may also be policy reasons why an employer – particularly in local government – will want to follow through on the disciplinary procedure even if it has become somewhat academic. It might be necessary to demonstrate that the situation is not being swept under the carpet.

But going ahead with a disciplinary process is not without its legal risks. Technically a dismissal that takes effect before the employee’s notice of resignation expires will still be a dismissal and the employee could still launch an unfair dismissal claim. Compensation is likely to be limited to duration of the notice still to expire but the basic award – equivalent to a statutory redundancy payment – could be expensive for employees with long service.

There is also the prospect of a discrimination claim. This was the issue in the recent case of **Zimmonds-Plummer v London Borough of Hammersmith and Fulham**. The employee was accused by the employer of committing election fraud while she was working on the electoral registrations process. It is important to emphasise here that the merits of the case have yet to be heard so there is no way of assessing the basis for that accusation. She was due to attend a disciplinary investigation but instead sent in an email resigning with immediate effect. The employer’s case – and this is something the employee disputes – is that they did not receive the resignation in advance of the disciplinary hearing and when she didn’t attend, they went ahead in her absence. The decision was taken to dismiss her without notice.

The employee claimed that she could not be dismissed by the employer because she had already resigned. The Tribunal held that if that was the case then she had no claim. Her only complaint was that the employer went ahead with the disciplinary hearing even after the end of her employment, but by then she was – as she herself argued – an ex-employee.



What the Tribunal seemed to ignore was the fact that a discrimination claim can be brought by ex-employees in relation to things that happened after their employment came to an end. What needs to be shown is that the act complained of arises out of and is closely connected to the relationship that used to exist – employment in a case like this – and would have amounted to unlawful discrimination if it was done while that relationship existed. A similar rule applies in relation to victimisation.

The most obvious circumstances in which this sort of claim arises is in the provision of a reference. If the employer refuses to provide a reference because of a protected characteristic, then that will be direct discrimination – and if a reference is withheld as a reprisal following the employee's complaints of discrimination, then that will be victimisation.

But in the Zimmonds-Plummer case the EAT accepted that a disciplinary hearing conducted after the employee had resigned could also amount to an act of post-employment discrimination. The Tribunal had therefore been wrong to strike out the claim without hearing the evidence first.

That might of course be where this particular claimant encounters a problem. It is not clear on what basis the allegation of discrimination was made. The allegations made against her were serious and it is easy to see why a local authority employer would want to ensure that any allegations of electoral fraud were dealt with in the open - with no suggestion that the employee was being 'allowed' to resign rather than have the full facts come out. In any event the employer's case was that they didn't receive her emailed resignation until after the hearing had taken place.

### **Darren's Advice for Employers**

So while in most cases the easiest – and safest - response to an employee resigning rather than face a disciplinary process is to let them go and not waste further resources on organising a hearing, there is nothing to stop an employer from going ahead where it considers that to be the best option.

## **National Developments**

### **National Pay**

#### **Craftworkers Pay Agreement Reached for 2021 and Offer made for 2022**

On 18<sup>th</sup> August agreement was reached on the pay award for local authority Craftworkers, covering the period 1 April 2021 to 31 March 2022. A copy of the circular can be found [here](#).

Having agreed pay for Craftworkers for 2021, the National Employers made a final offer for a pay award for 2022 and a copy is available [here](#). The offer to Craftworkers is for an increase of £1,925 on all Craft pay rates and 4.04% on all Craft allowances, and covers the period 1 April 2022 to 31 March 2023. We shall keep you informed of developments.

#### **Unions' Consultation on Green Book Pay Offer**

The unions are currently consulting their members on the final offer made by the national employers for Green Book employees for 2022. They are working to the following timetable:-

**UNISON's** consultation will run from 15 August to 19 September and it will be neutral on whether the offer should be accepted or rejected.

**GMB** will remain neutral on whether the offer should be accepted or rejected and its consultation will start on 22 August and run to 21 October.

**Unite** will be consulting its members with a recommendation that the offer should be rejected. Its consultation will run from the end of August to 14 October.

#### **Coroners' Pay**

The LGA together with the Joint Negotiating Committee (JNC) for Coroners are conducting research into coroners' pay as well as the position of the Coroner Service within local government. Relevant councils will have received an email invitation to take part in the survey. The closing date is 9th September 2022.





## Teachers' Pay 2022

Department for Education (DfE) published their response to School Teachers' Review Body's (STRB) 32nd report. The headlines of the response are: a 5% increase for most teachers, with bigger increases for early career teachers (max 8.9% outside of London) and no additional funding. Links to the STRB's report and the DfE response are here:

[DfE Response on Teachers' Pay](#)

[STRB's 32nd report](#)

The LGA's survey on teachers' pay for 2022 closes on **5<sup>th</sup> September**, requesting one response per local education authority. The survey can be accessed [here](#)

## HMRC Mileage Rates

EMC and other regional employers organisations have been feeding in concerns to the LGA from councils regarding the HMRC mileage rates. The rates have not been revised for 11 years and concerns have been raised on the impact for staff in light of soaring fuel prices. In response, the LGA Resources Board Chair Cllr Andrew Western has written to ministers requesting an urgent review to the rates to help councils reimburse staff at a fairer level.

## LGPS bulletin July 2022

The July 2022 issue of the LGPS bulletin includes articles covering the Government's academy guarantee, proposed changes to resolve the tax relief anomaly for low earners and the latest on pensions dashboards.

The bulletin can be accessed here: [LGPS bulletin 227 – July 2022](#)

## Overseas Recruitment: Bite-Size Guide for Social Care Providers

The LGA has produced a guide aimed at social care providers on recruiting from overseas. While the guide is specifically aimed to support the social care sector, it contains information that should be useful more broadly. A link to the guide is here: [LGA guide](#)

## Keeping children safe in education – online recruitment checks

The statutory guidance Keeping Children Safe in Education is regularly updated and the latest version, due to come into force from September 2022 includes a reference to conducting online searches of applicants. The LGA has produced a guidance note relating to this point which can be accessed here: [Guidance note](#)

## LABC Trainee Scheme

Local Authority Building Control (LABC) is currently recruiting around 150 people across England – including the East Midlands - to join a fully funded trainee scheme in the building control profession.

Many councils in the region have raised difficulties resourcing building control services. LABC said increased requirements from the Building Safety Act and an ageing demographic in the workforce mean that it is increasingly important new people are brought into the profession. The application process is now live and is being managed by OPUS – a link is provided here: [LABC training scheme application process](#)

## Apprenticeship Newsletter – August 2022

The latest LGA apprenticeship newsletter can be found [here](#) and includes:-

- REMINDER: Public Sector Target Reporting Process – Deadline to Complete 30 September 2022
- Recording of the LGA Summer National Online Apprenticeships Workshop
- Problems with Apprenticeship Incentive Payments?
- More New Tools Available on the KHUB
- Apprenticeships Mapping Tool Updated
- Webinars: Schools Update and Funding Rules Explainers
- Surgeries

