



HR in the East Midlands

February 2023

Pay remains the hot topic, with the regional pay briefing held earlier this month and pay offers being made last week. See the information below and on our national news sections. Darren's article looks at the risks of age discrimination in an interesting case relating to the timing of a restructure prior to the claimant reaching 55 and being able to access their LGPS pension. The L&D section has further details of the Apprentice of the Year event and a session for you to find out more about whether it would be of interest.

Regional Pay Consultation Briefing

We had the highest attendance levels so far at the regional pay briefing on 8th February and those attending fed back to us how useful they found it.

Thank you to everyone who provided responses to the pay consultation questions. These were collated and provided to the National Employers ahead of their meeting last week, which resulted in the pay offers being made. We circulated the information on the day the offers were made to the unions/representatives of the bargaining groups, but our national news section has a round-up and links for anyone who may have missed the information.

Councillor Development Offer

EMC's support with Member development is valued by councillors and authorities alike, and we are in the process of developing our offer as part of councillor induction programmes. The regional programme of events aims to complement your in-house councillor development programmes; it is informed by the Councillor Development network and Regional Employers Board and includes:-

- Training for Civic Heads
- Levelling Up & Implications for Planning
- Scrutiny
- Cyber Security
- Social Media
- Charing Skills
- Regional New Member Event, with a 6-month follow-up

We will be providing details soon, but for any initial queries, contact Lisa (details provided below).

Projects with Local Authorities

During February, EMC has supported councils with:-

- Interim HR Management
- Coaching
- Chief Executive appraisal facilitation

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 – Virtual Event

25th May with Celebration/Awards on the morning of
26th May 2023



As mentioned in last month's HR Bulletin, EMC is working with our regional and national counterparts to provide this national event. It takes place virtually to help make it easier for apprentices to participate from across the country. As well as providing a unique development opportunity in a fun environment, the event recognises the quality of apprentices within our sector.

As an update, bookings have now opened for the event and if your Council is ready to sign up your apprentices then you can book through the following link: [Local Government Apprentice of the Year 2023 | Local Government Association](#)

To help councils decide if the event is for them, there will be a 'Find Out More' session on 8 March – see the details below:-

Come along to the 'find out more' session over lunchtime on 8 March - book your FREE place now.

<https://lnkd.in/eEJKXQhS>

Whether you are an apprentice yourself and think this event could be a great opportunity for you, or you are a line manager to an apprentice who could benefit from attending, come along and see what it is all about.

Maybe you are an HR or L&D professional who is thinking about who to encourage to enter from their Council, or even a Chief Executive who wants to

see the 'Local Government Apprentice of the Year' title brought home to their Council, this 'Find Out More' session is aimed at everyone to come and learn about what is in store!

If you have any questions about either the 'find out more' session or the main event, please email events@eelga.gov.uk

A quick reminder of the key details of the event are:-

It takes place for the full day on 25th May 8.30am – 4.30pm and an hour on 26th May 10.00am – 11.00am where the prizes are given! The overall event winner receives £500 in Love2Shop vouchers and there are runner-up and winning team prizes too! The cost to enter is £149.00 + VAT per apprentice.

If you would like to know more about the Local Government Apprentice of the Year event, [Local Government Apprentice of the Year 2022 - EELGA](#). You can also view the FAQ's [here](#)

Want to 'find out more' about the Local Government Apprentice of the Year 2023 event? [#LGApprentice2023](#) [#LGApprentice2023](#) [#apprenticeships](#) [#localgovernment](#)

FOMO on the East Midlands Challenge? – Last Chance to Book a Team

We have a great number of teams joining us for this year's East Midlands Challenge on 16th March at Leicester Racecourse.

Tomorrow (1st March) is the final date for letting us know that you want to enter a team. You can provide names of team members on the following day.

For further information or to book a team on the event please use this link: [EM Challenge](#) or contact Lisa at lisa.butterfill@emcouncils.gov.uk.



In Deep with Darren

This month, Darren Newman looks at age discrimination and a claim that a redundancy process was rushed to be completed before early pension access was available.

Age is the newest of the protected characteristics – added to the others in 2006 – and it seems that Tribunals can still struggle to take on board the fact that it is just as unlawful to discriminate someone because of their age as because of their race or sex.

In **Cook v Gentoo Group Ltd** (EAT) the employer was a registered charity and a social housing landlord. Mr Cook was employed as the Head of Compliance and was a member of the Local Government Pension Scheme. As a result of a restructure his role was 'deleted' and he was made redundant. Normally the deletion of a role at his level of seniority would require board approval, but the decision was taken to proceed in the absence of this to 'hurry through' the redundancy process. The reason for the rush was to ensure that his redundancy took place before he reached the age of 55. If he was 55 at the time of his dismissal, then the employer would have to make a payment to the LGPS of approximately £80,000.

It is understandable that the employer would want to avoid making that payment. But the fact remains that the reason his redundancy process was rushed was his age. Had he been any age other than 54 there would have been no reason to circumvent the employer's usual procedures for making redundancies.

The Tribunal found that his dismissal was unfair. The redundancy process had been hurried through and there had been no proper consideration of alternative work. If a fair procedure had been followed his dismissal for redundancy would have been inevitable, but his contract would not have ended until after he had reached the age of 55.

Nevertheless, the Tribunal found that his dismissal did not amount to age discrimination. There were

two reasons for this. The first was that the comparators the employee relied on in establishing discrimination were not appropriate. This was accepted on appeal to be an unsustainable point. In a direct discrimination claim comparators can be hypothetical – the question is would the employee have been treated more favourably than someone in the same circumstances as him but of a different age? The answer to that question in Mr Cook's case was clearly 'yes' and it is rather surprising that the Tribunal did not immediately see that.

The second ground on which his claim was rejected was that any discrimination involved in rushing through his redundancy was a proportionate means of achieving a legitimate aim. This is much more tricky. Age discrimination is unique in the Equality Act in that it allows for a general defence of justification in a case of direct discrimination. The employer can say 'yes. I did treat you less favourably because of your age but I did so for good reason'. This defence is just not available in relation to other protected characteristics.

On the face of it, the employer in this case might be thought to have a good argument. Having to pay £80,000 to the LGPS is likely to be a huge problem for a charity – and this particular employer had been criticised in the past by the Home and Communities Agency for the severance payments that had been made to outgoing senior executives. It makes sense that the employer would want to avoid having to make this payment if it could.

But defending direct discrimination is not as straightforward as that. The first problem is that discrimination cannot be justified merely by the desire to save costs. There must be an intention to do 'something more' than that. In *Woodcock v Cumbria Primary Care Trust* (Court of Appeal, 2012) the Court held that the desire to prevent the employee enjoying a windfall could justify direct age discrimination. That was another case in which the employer brought forward a redundancy to prevent the employee from benefiting from enhanced pension benefits. But the employee in that case had managed to delay the start of the redundancy process by many months - clearly with a view to reaching the age threshold for an enhanced pension – and the employer only noticed the impending change in entitlement late on in the process. Had it



followed its normal redundancy procedures the employee would have been dismissed long before he reached the age of 55. In Mr Cook's case the employer brought forward the whole process with the deliberate intention of avoiding the extra liability. Had it followed its normal procedures Mr Cook would have qualified for his enhanced pension. The Employment Appeal Tribunal held that the Tribunal had not explained why it regarded his qualification for early retirement as a 'windfall'.

Another problem with the Tribunal's analysis was that in *Seldon v Clarkson Wright and Jakes* (2012, Supreme Court) it had been held that the justification presented in a direct age discrimination case had to have some social policy objective related to wider employment policies, the labour market or vocational training. This conclusion was based on an analysis of the EU Equal Treatment Directive which set out the justification defence adopted by the Equality Act - and on subsequent decisions of the European Court of Justice. So in that case a policy on retirement in a solicitors firm was held to be justified because, among other factors, of the need to make way for more junior solicitors to move through the ranks and become partners. In Mr Cook's case, the EAT did not think that the Tribunal had done enough to demonstrate the social policy objective that the employer intended to achieve by hastening the departure of Mr Cook before his enhanced pension rights kicked in. The case was sent back to a fresh Tribunal to be reconsidered.

While the EAT did not feel able to determine the final outcome of the case it is clear that the employer will face an uphill battle in justifying its discrimination against Mr Cook. By bringing forward the redundancy and bypassing their normal procedures they denied him a benefit that he had a legitimate right to expect. The early retirement provisions in the Local Government Pension Scheme can present a challenge for employers but that fact alone will surely not be enough allow for employees to be made redundant early just so that they can be avoided.

One further wrinkle is that this strict approach to justification is based on the need to comply with EU law. That need has survived the UK's withdrawal of the EU – but it is not clear that it will survive the Retained EU Law (Revocation and Reform) Bill currently going through Parliament. If, and when, that Bill comes into force, the justification defence in age discrimination claims may have to be considered afresh.

National Developments

National Pay & Conditions

Pay Offer for Green Book Employees

We provided information on the joint unions' pay claim for 2023 in last month's bulletin. The National Employers met on 23rd Feb and have made a full and final offer to the trade unions representing local government services ('Green Book') employees. A copy of the offer can be found [here](#).

Chief Executives' Pay Offer

Last month's bulletin provided information on the pay claim that was submitted by representatives of Chief Executives. The National Employers met on 23rd Feb and have made a full and final offer to the Staff Side representing local authority Chief Executives. The details can be found [here](#).

Chief Officers' Pay Claim and Employers' Offer

The representatives of Chief Officers submitted a pay claim on 7th February 2023. A copy of the claim can be accessed [here](#).

The National Employers met on 23rd Feb and have made a full and final offer to the Staff Side representing local authority Chief Executives. The details can be found [here](#)

Craftworkers' Pay Claim 2023-24 and Offer

A pay claim from the JNC Trade Unions for local authority Craftworker ('Red Book') employees was received on 21st February 2023. The claim seeks:

- An increase in all pay rates and allowances of RPI (13.40 per cent) + 2.0 per cent
- A substantial additional increase to tool allowances and tool insurance cover
- A recruitment and retention payment
- Reduction in the basic working week to 35 hours, with no loss of earnings
- An increase of two annual leave days
- A payment for increasing use of technology (PDAs) and home energy systems around tools and vehicles.



A copy of the circular with details of the claim can be found [here](#).

The National Employers met on 23rd Feb and have made a full and final offer to the Staff Side representing local authority Craftworkers. The details can be found [here](#).

Fire & Rescue Services Pay

On 8th February a further pay offer was made within the UK-wide National Joint Council for Local Authority Fire and Rescue Services, which covers uniformed personnel including firefighters. Discussions were also proposed to explore the wider points in the pay claim. The Fire Brigades Union will now consult its members, recommending acceptance. Notification of strike dates will not take place while the consultation is open. You can access details of the further pay offer through the following link: [further pay offer](#)

Agreement on Coroners Pay Award 2022

Agreement has been reached on Coroners' pay for 2022. On 16th Feb 2023 the pay award for 2022-2023 for Coroners from the Joint Negotiating Committee was agreed as 1.56% with effect from 1 April 2022. A copy of the circular can be found [here](#).

Teachers Pay 2023 – School Teachers Review Body: Revised Timeline

DfE's written evidence to the School Teachers' Review Body (**STRB**) has been delayed, resulting in the deadline being extended to 22 March.

The National Employers' Organisation for School Teachers (**NEOST**) evidence will now be published on the LGA's website. The STRB will submit their report in May, following oral evidence sessions which are scheduled to take place during week commencing 17th April.

Information on the Workforce in Children's Social Work

The Department for Education (DfE) has published data about children's social workers employed in local authorities and agency social workers in 2022. It includes information the number of starters and leavers, vacancy levels and staff turnover rates. It provides evidence of the issues and pressures being faced in social care. The information can be accessed through the following link: [data](#)

T Levels Newsletter

In this edition you can find out how Hillingdon Council's early careers strategy has embedded apprenticeships, T Levels, traineeships and other post-16 routes to attract young, local talent to the workforce. There's also details about a new employer support fund from the Department for Education, which will provide support for T Level industry placements. Click [here](#) to view the newsletter.

Apprenticeship Newsletter

The February edition of the Apprenticeship Newsletter includes information on the data that councils will be required to report on apprenticeships, the LGA's Apprenticeships Survey, and news on the increased bursary for care leaver apprentices. Click on the following link to view the newsletter: [Apprenticeship Newsletter](#)

