



HR in the East Midlands

February 2022

This month sees a focus on pay – updates on current negotiations and an opportunity to explore the challenges of future pay for local government. Darren Newman’s article looks at two key cases on trans rights and discrimination based on religion and belief. Our regional L&OD network is a popular and effective way for councils to connect and share information and practice. The next meeting is on Thursday 3rd March, so it is timely to feature the network in the L&D section so you can find out more and join in.

National Pay & Implications of Implementing an Offer Early

As we move closer to payroll deadlines and the new financial year with higher NI rates, pressure has increased on reaching pay agreements. Pay awards have been agreed for some groups and you can access the relevant circulars which we’ve already issued in our National news section. With the last of union ballots closing today for Green Book & Craftworkers, it is hoped that we can see a Circular being issued **imminently** with a pay award for 2021.

We have received many queries from councils wanting to pay the final offer made to unions by the National Employers. Our advice has been to strongly warn against implementing the offer, while we totally understand the frustration felt as the timetable of unions for conducting their ballots has delayed progress. Implications are that it would be a breach of the

collective agreement and may be questioned by auditors. The Supreme Court ruling in a case against Kostal UK also demonstrated the risks of acting before collective bargaining has been concluded. The cost implications of losing a similar claim are significant, costing over £3000 per employee. To implement ahead of the agreement also weakens the solidarity of councils working collectively the negotiating position of national employers.

Future Challenges for LG Pay

We are pleased to confirm arrangements for a pay briefing to enable senior officers and elected members of councils in the region to meet with National Employers to discuss the challenges being faced by the sector in future pay negotiations within the context of forecast increases to the National Living Wage.

The briefing will be held virtually on **Monday 7th March 2022 from 10.00 – 12.00**. If you wish to book a place please register [here](#).

Projects with Local Authorities

During February, EMC has supported individual councils with:-

- Coaching
- Recruitment and selection
- Psychometric testing

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

Learning and Organisational Development Network

The next Learning and Organisational Development network meeting will take place on 3rd March at 9.30 via MSTeams.

The meeting will cover:-

Leading Hybrid Teams with input on work across the region and beyond to support managers with leading hybrid and remote teams. It will include:-

- What providers are offering
- Sharing experiences of delivering
- Discussing potential content for an “ideal programme”

Supporting Skills Gaps through Planning

Apprenticeships learning about the University of Birmingham’s Chartered Town Planner Degree Apprenticeship

Members of the network have identified a number of themes where collaborative working/exploration would be beneficial and these will be covered in future meetings and work plans:-

- Induction
- PDR
- Talent
- Leadership and Management Development

Feedback from Participants Here is just one example of the positive feedback from participants of the L&OD network:-

“Just wanted to thank you for a really interesting and informative meeting yesterday afternoon. I normally cannot attend due to my working hours and childcare commitments, so it was lovely to have the opportunity to ‘meet’ with you all!”

To take part in the network please contact Kirsty.Lowe@emcouncils.gov.uk

Coaching Network Showcase, 16 March 2022, 2pm

EMC is hosting a 1-hour virtual event to share information about the East Midlands Coaching Network. We’ll include an opportunity to hear directly from some of the coaching network members to find out how they use the network and the benefits they have seen. We will:-

- provide an overview of the Coaching Network
- share details of the membership offer
- provide a demonstration of the on-line resources available through the dedicated platform Mye-Coach. The system helps to match coachees and coaches, and we will also show how it is used to manage, monitor and evaluate coaching activity
- show how the continuous development of coaches is supported
- outline the organisational support available

For more information about this event and to book a place please find [here](#).

Local Government Apprentice of the Year 2022

This is a national event with participants across the country competing to become the Local Government Apprentice of the Year 2022. All Councils in England are encouraged to send one apprentice or more, to take part in the event, to make this a truly National celebration of our apprenticeship talent. The event will take place on 25 May (8:30–4:30), with colleagues returning on the morning on 26 May (10:00–11:00) to celebrate successes and crown the winner.

EMC colleagues will be supporting the delivery of the event and we hope to see many apprentices from across the East Midlands taking part.

It is open to all level 2 and level 3 apprentices in local government across England (current apprentices or those who qualified within last 12 months). For further information or to book a place visit [here](#).

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 issues relating to trans rights and discrimination based on religion and belief with two key cases taking place in the coming month.

March is going to be a big month for issues around trans rights and discrimination based on religion and belief. We have two cases coming before the Employment Appeal Tribunal and a crucial Tribunal hearing in the most high-profile case of the three – **Forstater v CGD Europe**.

Forstater has already been to the EAT once. In June 2021 it was held that her philosophical belief – that biological sex was immutable, and that gender reassignment did not alter the fact that an individual was biologically either male or female – was held to be covered by the Equality Act 2010. This overturned the finding of the Employment Tribunal that her belief was not protected because it was not worthy of respect in a democratic society. The EAT held that only those with the most extreme beliefs – they specifically referenced Nazis as an example – could be excluded from protection on that basis. The case now returns to the Tribunal to decide whether or not Ms Forstater was actually discriminated against.

Not enough of the extensive commentary around this case has made it clear that establishing that a belief is protected by the Equality Act is of no real use if that belief was not in fact the reason for the less favourable treatment complained of. Ms Forstater is making an allegation of direct discrimination. That means she is alleging that she was treated less favourably *because of* her philosophical belief. The treatment in question is the non-renewal of a freelance research contract and so the question is whether the employer would have renewed the contract of a researcher who did not have Ms Forstater's beliefs, but who was in all other respects in the same situation.

The facts of Ms Forstater's case have yet to be established -that is what the forthcoming Tribunal hearing is for. But let's take a hypothetical example.

Suppose somebody's philosophical beliefs led them to behave in a way that was considered to be rude and discourteous towards colleagues and that as a result the employer subjected them to some detriment like a warning or withholding an expected promotion. The issue would be whether the employer would have treated someone who was equally rude and discourteous, but who did not have that philosophical belief, any differently. In other words, was the reason for the less favourable treatment the belief itself or the conduct that was prompted by that belief.

The two cases coming before the EAT in March may revisit this issue.

In **Mackereth v Department for Work and Pensions**

Dr Mackereth was engaged under a contract with the DWP to carry out assessments of service users claiming certain benefits. He is a committed Christian and part of his particular belief is that it is neither possible nor appropriate for individuals to seek to change their sex or gender. He described this as a 'conscientious objection to transgenderism'. As a result he felt unable to comply with the DWP's policy on gender reassignment which required him to respect the gender identities of the service users he was assessing. Not only did he refuse to refer to service users using their preferred pronouns, but he made it clear that he would not use their preferred form of address – ie 'Ms or Mr' – if that conflicted with what he perceived their true sex to be. His contract was terminated and he claimed discrimination based on religious belief. The Tribunal found that his beliefs were not protected because they were incompatible with human dignity and conflicted with the fundamental rights of others.

Following Forstater, it would seem that this finding must in fact be wrong. However offensive his views might be to others, he is not advocating violence or the sort of extreme measures that the EAT said would be required to deny a belief protection. I think Dr Mackereth should succeed in persuading the EAT that his belief is protected – but he should still lose his case

This is because he was not excluded from his role on the grounds of his belief but because of the way in which he indicated that he would behave. He made it clear that he would not follow the DWP's guidelines in



relation to transgender service users and the Tribunal agreed that that would expose them to claims of discrimination and harassment. Anybody who refused to follow the guidelines would have been treated in exactly the same way regardless of their beliefs. It follows that applying that rule to Dr Mackereth was not direct discrimination. Nor was it indirect discrimination. It may be that the requirement to follow the guidelines caused people who shared Dr Mackereth's very particular beliefs a disadvantage. However the Tribunal found – and I am sure the EAT will agree – that imposing guidelines designed to ensure that service users are treated with respect and not discriminated against is a 'proportionate means of achieving a legitimate aim' and not unlawful.

The other case due before the EAT is less extreme. In **Higgs v Farmors School** the claim concerned a teacher who was dismissed for social media posts relating to gender identity that were considered by the school to be potentially offensive to parents. Her unfair dismissal claim was withdrawn (presumably settled) and she did not claim indirect discrimination. The Tribunal accepted that her beliefs about gender identity were protected but held that her dismissal was not 'because of' those beliefs but because of her social media activity.

The appeal will be heard at the beginning of March, but I struggle to see the EAT reaching a different conclusion.

My hope is that the clear decision of the EAT in Forstater will move us on from the rather stale debate about which beliefs should be regarded as protected by the Equality Act.

The scope of the Act can be very wide - encompassing all sorts of irrational or even offensive beliefs - without causing any difficulties for employers. Provided the courts continue to see a clear distinction between the belief itself and conduct that is motivated by that belief then the key question will be whether the limits placed on that conduct by the employer are proportionate and designed to further a legitimate business aim. That seems to me to be a reasonable way of balancing potentially competing rights.

National Developments

Pay Negotiations

In the event that the 2021 pay deal has not been finalised by 1st April, the National Joint Secretaries have issued an instruction to temporarily increase '**Green Book**' pay points **1 and 2**, and the **craft building labourer grade** on 1st April to ensure councils are compliant with the new National Living Wage rate.

Last week we shared information on the position of unions who are part of Green Book negotiations. A [UNISON branch newsletter](#) had been issued that appeared to confirm that UNISON intends to settle the 2021 NJC pay round. However, a decision has been made by its national local government committee not to do so until today (28 February) after the last of Unite's industrial action ballots has closed. GMB had previously issued its own [statement](#) saying it wanted to settle. The Constitution of the Trade Union Side of the NJC provides that formal collective agreements can be reached with the National Employers if two of the three unions, one of which must be UNISON, agrees. This news has not yet been communicated formally to the National Employers, which means it is not possible for the 2021 pay deal circular to be issued. **As soon as a circular is agreed, we will share it with councils.**

Youth and Community Workers: The Staff Side rejected a final offer of a 1.75% increase. Both Unite and Unison have undertaken industrial action ballots. Unison's ballot for industrial action was rejected. Unite's strike ballots have closed and Unite's national local government committee will be meeting today (Monday 28 Feb) to discuss the next steps.

Earlier this month we saw agreement reached for a pay award from 1st April 2021 for **Chief Executives** and for **Chief Officers**, for an increase of 1.5%. We issued the notification and circulars at the time, but you can access a copy here: [chief officers and chief executives](#)

Soulbury Officers: Agreement has been reached on a pay award for local authority Soulbury Officers, covering the period 1 September 2021 to 31 August 2022. Further details can be found on the circular [here](#).



COVID-Related News - Reversal of Mandatory vaccination consultation

The Government is going through the legal steps to revoke mandatory vaccinations for health and social care workers. It conducted a week-long consultation by the Department for Health & Social Care which closed on 16th February. The consultation can be accessed here: [consultation](#).

The Department acknowledged that all people working in health and social care settings have a professional duty to be vaccinated, but said it believes it is “no longer proportionate” to require vaccination as a condition of deployment through statute in health, care homes or other social care settings.

T Levels

Following on from information provided in last month’s HR bulletin and the event we hosted with the LGA, we have further information on the LGA’s offer of support to Councils relating to T levels.

The LGA’s T Level Support Programme offers up to **5 days of flexible support** over the duration of the **2-year project**. This flexible programme is tailored to support councils deliver high quality Industry Placements as part of the T Level qualifications. On top of this, each council will have access to a toolkit which includes information and resources centred around T Levels, Industry Placements and managing a young person.

The LGA has capacity for 35 councils to sign up to this support programme. If you would like a preliminary conversation about T Levels, Industry Placements or the LGA’s T Level Support Programme please contact David Drewry David.drewry@local.gov.uk

Further information on what T Levels are and the benefits, including the application form can be found on the following link: [T Level support information](#)

Apprenticeships

The latest LGA apprenticeship newsletter can be found [here](#).

It covers developments in the world of apprenticeships, including:-

- Local Government Apprentice launch 2022
- Apprenticeship Incentives
- New Offer: Comparative Data Briefings
- LGA Apprenticeship Surgeries
- INLOGOV Senior Leader Degree Apprenticeship Programme
- Arts Therapist Degree Apprenticeship – National Demand Scoping
- Top 100 Apprenticeship Employers 2022

