



HR in the East Midlands

January 2023

Our first bulletin of 2023 is packed with hot-off-the-press national developments on pay. We also provide information on government consultations on proposed employment law changes. Darren Newman's article looks at a case relating to 3rd party harassment and potential changes to employers' responsibilities if a private members' bill currently going through Parliament becomes law. It's not too late to enter a team in the East Midlands Challenge – 2 places are left for teams to join others across the region to get a unique experience in a fun environment. See the L&D section for details of this, as well as the 2023 Apprentice of the Year virtual event.

Regional Pay Consultation Briefing and Pay Claims for Green Book Staff and Chief Executives

You will be aware from previous bulletins that EMC is hosting a regional pay briefing to enable the National Employers to meet with lead Members and Officers from councils to discuss the pay negotiations for 2023.

As a reminder, the briefing will be at 3.15pm on Wednesday 8th February. We are arranging the briefing in two parts - there will first be a meeting with national officers from Unison and GMB to outline the joint pay claim (see below); this will be followed by a meeting for

employers only and will provide an opportunity to discuss the claims, background information and relevant issues relating to the negotiations for this year.

Yesterday, the National Employers received the NJC Trade Unions' 2023 pay claim for local government services ('Green Book') employees. This morning, the National Employers received a pay claim for 2023 on behalf of Chief Executives. Details of both these claims and a link to access the claims in full are set out in the National News Section of this bulletin.

Councils will be briefed on these claims along with other relevant background information at the pay briefing meeting on 8th February. Separate pay claims have not yet been submitted by the Staff Sides representing local authority Chief Officers and Craftworkers.

The National Employers will be meeting on 23 February to consider the pay claim and feedback from the regional briefings.

Projects with Local Authorities

During January, EMC has supported councils with:-

- Providing in-house and regional management development programmes
- Chief Executive appraisal facilitation
- Interim HR Management

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 National Event

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

The Local Government Apprentice of the Year 2023 is an exciting event providing the opportunity for apprentices to learn, network and showcase their skills, expertise, and initiative. Participants will work in virtual teams to experience the opportunities, risks, and challenges involved in delivering successful local government services, in a developmental environment.

The event will be of interest to apprentices who

- Are looking to push themselves and test their skills and capability.
- Are interested in challenging and developing themselves alongside others in the same position.
- Would like to be recognised nationally and stand out amongst their peers.

This is an opportunity for apprentices to come together with their peers across the country, in the safe and well supported environment of this development event undertaken via Zoom. An attendee from the 2021 event commented, “I really enjoyed this event and would definitely recommend any apprentices thinking of taking part to take part. Not only do you meet new people from across the country with similar interests to yourself, but you also learn vital skills which you can then take with you into your work place.”

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](#)

East Midlands Challenge – 16 March 2023 at Leicester Racecourse

It's getting closer to the East Midlands Challenge, and it's great that so many teams have already signed up to this key development event.

This is where your aspiring leaders have the opportunity to gain exposure to senior management issues, learn and develop new skills – and win awards too! This showcase event is a unique opportunity to learn through experience and fun working as a team.

There are 2 spaces left if you are interested in taking part in the event before our closing date of **3rd February 2023**.

At this stage we still only need your intention to participate as an organisation. Details of who will be participating within your team can follow.

For further information or to book a team on the event please use this link: [EM Challenge](#). Alternatively, you can contact Lisa if you have any other questions at lisa.butterfill@emcouncils.gov.uk.

Here's a picture from the Challenge held at the velodrome in Derby. Be assured that there won't be racehorses in the room when we are at Leicester Racecourse in March!



In Deep with Darren

This month, Darren Newman looks at Third Party Harassment

The Tribunal decision in *Mallet-Ali v Perth & Kinross Council*¹ illustrates an important gap in the protection against harassment afforded to employees under the Equality Act 2010.

Ms Mallet-Ali was a home economics teacher at a school in Perth. She was subjected to racial harassment by a number of pupils at the school who spoke to her with an exaggerated Indian accent or – rather bizarrely – greeted her with a Jamaican slang term. She was unhappy with the measures taken by the school in dealing with these incidents. The school favoured a ‘restorative approach’ which involved talking to the pupil about its behaviour but did not involve any punitive sanctions or excluding the pupil for future lessons. Following an extended period of absence she resigned, citing a breakdown in the working relationship and she claimed race discrimination.

Her problem was that the pupils were not, obviously, the employees of the school. Under the Equality Act an employer is liable for the acts of employees done in the course of their employment unless it has taken all reasonable steps to prevent those acts. However, it is not liable for the discriminatory acts of third parties – be they customers, members of the public or school pupils. So Ms Mallet-Ali could not claim racial harassment on the basis of the treatment she received from the schoolchildren – however serious that treatment was.

To win her discrimination claim, she had to show that the school itself had treated her less favourably on the grounds of race in the way in which it dealt with her complaints. It was clear however that the restorative approach favoured by the school was applied across the board. The Tribunal held that it would have taken the same approach to complaints of a similar level of seriousness irrespective of which teacher was the

target and whether that treatment related to race or some other aspect of the teacher’s identity or appearance. Her complaint of race discrimination was therefore rejected.

On the current state of the law this decision strikes me as being legally correct. However, a Bill currently before Parliament would make a significant difference to similar cases arising in the future. The Worker Protection (Amendment of Equality Act 2010) Bill makes employers liable for the harassment that employees experience from third parties such as customers, suppliers, or members of the public if the employer has not taken reasonable steps to prevent the harassment.

This is a private member’s bill which usually means that it has no chance of becoming law. But this particular Bill is being supported by the Government. It has already cleared the Committee Stage in the House of Commons and looks set to complete its Commons stages on 3 February before going on to the House of Lords. That it has got so far is a strong indication that it will be passed and become an Act of Parliament.

When it is in force, employees such as Ms Mallet-Ali will be able to claim harassment when subjected to racial abuse by school pupils and it will be for the school to establish that they took all reasonable steps to prevent that harassment from occurring.

How far an employer needs to go in preventing harassment from third parties will vary with the circumstances. There are some environments that the employer cannot control and its scope for preventing harassment is limited – think of street-cleaning teams encountering whichever members of the public happen to be walking by at the time. In a school however, the employer is in a much stronger position to control what goes on and who is present. A tribunal will therefore expect much more of an employer in terms of taking preventative steps when it comes to the behaviour of pupils.

¹ [EMPLOYMENT TRIBUNALS \(SCOTLAND\)
\(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/674422/employment-tribunals-scotland.pdf)



In a case such as Ms Mallet-Ali's this might involve having to take a close look at how the school dealt with previous complaints and the pupils who were known to engage in such behaviour. Where particular pupils have a history of discriminatory conduct then there will be a strong argument that they should not be returned to the classroom where it is likely that the teacher will suffer further harassment. To avoid liability the school would have to argue that, in the circumstances it would not be a reasonable step to exclude the pupil from that environment. It is not clear how comfortable a Tribunal would be in having to choose between a school's preference for a restorative approach – which it no doubt considers to be best for the education and welfare of the children – and the need to protect employees from conduct amounting to harassment.

There is another aspect of the Bill that is worth considering. As well as extending liability for harassment committed by third parties it also imposes a duty on employers to take positive steps to prevent sexual harassment in the workplace. This duty is limited by the fact that it can only be enforced by the Equality Commission who can carry out formal investigations into the steps taken by employers and, if they are inadequate, issue them with formal notices requiring them to do more. In practice, such formal steps will be incredibly rare – the Commission's resources will not stretch beyond a small handful of formal investigations and the risk of any one employer being subjected to one will be vanishingly small. However, an employer that is found to have failed to take all reasonable steps may, if an employee brings a successful sexual harassment claim to the Tribunal, be ordered to pay additional compensation of as much as 25% on top of the amount that would otherwise be awarded.

In effect this enhanced compensation will be payable in all cases of sexual harassment. After all, a successful claim of harassment can only be brought if the employer has in fact failed to take reasonable steps to prevent it. Employers who have taken all reasonable steps will have a defence against the claim. But the 25% uplift will only be available in sexual harassment claims – it will not be available in cases of harassment based on, for example, race or disability. This special treatment of sexual harassment doesn't seem quite right and may be something worth addressing as the Bill makes its way through Parliament.

National Developments

National Pay & Conditions

Pay Claim for Green Book Employees

As mentioned on the front page of this month's bulletin, the Joint Unions representing Local Government Services Employees (those on Green Book terms and conditions) submitted their pay claim for 2023 yesterday. A copy of the claim can be accessed [here](#)

In summary, it seeks:-

- RPI + 2% on all pay points
- Consideration of a flat rate increase to hourly rates of pay in order to bring the minimum rate up to £15 per hour within two years
- A review and improvement of NJC terms for family leave and pay
- A review of job evaluation outcomes for school staff whose day-to-day work includes working on Special Educational Needs (SEN)
- An additional day of annual leave for personal or well-being purposes
- A homeworking allowance for staff for whom it is a requirement to work from home
- A reduction in the working week by two hours
- A review of the pay spine, including looking at the top end, and discussions about the link between how remuneration can be used to improve retention

The claim cites an RPI figure of 10.7%, which is the current annual forecast for RPI in 2023, published in November 2022 by the Office for Budget Responsibility. Therefore, to meet the pay element of the claim in full (12.7%) would increase local government's national paybill by more than £2.1bn.

Chief Executives' Pay Claim

A copy of the claim received today can be accessed [here](#). In summary, it seeks:-

- a pay increase for all chief executives in April 2023 and subsequent years that is the same as the percentage increase for the top point on the scale for local government staff covered by the National Joint Council for Local Government Services (NB: If the pay offer is expressed in £s rather than a



percentage for the NJC scale, we are seeking a pay increase for chief executives that is not less than the percentage increase for the top point on the NJC scale. If the pay offer for the NJC scale is expressed in percentage terms...we are seeking a percentage pay increase for chief executives that is the same as the percentage increase for the top point on the NJC scale, spinal column point 43)

- a direct and immutable link for increases for April 2023 onwards, to ensure that chief executives would receive the same percentage increase as the top point on the NJC scale
- the potential need to review the provision that the leave allowance for chief executives is a minimum of 30 days (inclusive of any long service leave, extra statutory and local holidays). If the 2023 pay deal for NJC staff involves any further increase in annual leave, we would expect to see a matching increase in the minimum leave allowance for chief executives.

Youth & Community Workers 2022 Pay Award

On 22nd December 2022, agreement was reached for a pay award for Youth & Community workers for 2022. A copy of the circular is available here: [Youth & Community Pay Award](#)

Industrial Action

National Education Union planned school teacher strike days February/March 2023

On 16th January, NEU announced strike days for schoolteachers. In England, the NEU's mandate for industrial action covers teachers and not schools support staff. The East Midlands will be affected on the following dates: 1st February, 1st March, 15th and 16th March. The 1st March is a date of regional action, while the other dates will affect schools across England and Wales.

The Department for Education (DfE) has updated guidance on handling strike action in schools and this can be accessed here: [DFE guidance](#)

Fire Brigades Union Ballot Outcome and Agreement on Response to Major Incidents

The Fire Brigades Union (FBU) yesterday announced the outcome of its ballot which was in favour of taking strike action in support of its pay claim and rejection of the employers' 5% offer. The NJC will be meeting on 8th February.

A national agreement has been reached through the NJC for Local Authority Fire and Rescue Services that would provide for striking FBU members to be able to respond to any major incidents. The Agreement was made in advance of any outcome of the ballot to help with local planning, in case strike action was the outcome.

A copy of the agreement is available here: [Agreement](#)

Minimum Services Levels during Strikes

This month the Government introduced the Strikes (Minimum Service Levels) Bill into Parliament. The Bill will allow the Secretary of State for BEIS to make Regulations which set minimum service levels in the event of a strike in certain sectors, including fire and rescue, education and transport.

An employer in these sectors would then be able to issue a work notice specifying which individuals it requires to work in order to meet these standards. If these notices are not complied with, the union concerned may be liable for damages and individuals who are specified in the notice and who do not comply with it will lose unfair dismissal protection.

A copy of the Bill is available here: [Strikes \(Minimum Service Levels\) Bill](#)

The Government will first consult on setting minimum service levels in the fire, rail, and ambulance services.

Government consultations on further changes to employment unrelated to industrial action are outlined on the following page.



Consultation on Holiday Pay/Entitlement for Part-Year and Irregular Hours Workers

The Government is consulting on holiday pay and entitlement for part-year and irregular hours workers following the outcome of the Brasel case.

The Government aims to address the issue that the current legislation means that those who have an irregular or part-year work pattern are entitled to a larger holiday entitlement than part-time workers who work the same total number of hours across the year. Their aim is to ensure that holiday pay and entitlement received by workers is proportionate to the time they spend working and wants to understand the implications of any changes through this consultation process. The consultation document can be found here: [consultation](#)

We will keep you informed of any developments. If you would like EMC to provide a regional response to the consultation, in addition to feeding into any national response, we would be happy to do so. Please contact Sam with any comments – sam.maher@emcouncils.gov.uk The consultation closes on 9th March 2023.

Consultation on the Introduction of a Code of Practice Relating to Dismissal & Re-Engagement

The government has announced that it intends to introduce a statutory code of practice, which it sees as a way of protecting employees from dismissal and re-engagement.

The Code seeks to set out employers' responsibilities when seeking to change employment terms and conditions. It aims to make it clear to employers that they must not use threats of dismissal to pressurise employees into accepting new terms, and that they should have honest and open-minded discussions with their employees and representatives.

Consultation on the proposal runs for 12 weeks, closing on 18th April 2023. The consultation document is available here: [Draft Code of Practice](#)

