



HR in the East Midlands

June 2020

We've had great take-up and feedback on our virtual support, development and networking opportunities and this month's Bulletin highlights what's coming up. Some Councils use the Bradford Score to inform absence management, and Darren Newman's article looks at a recent European legal ruling which should be of interest. In the heat of June, how appropriate(!) for an agreement to be published on Christmas working arrangements. We cover this and other national developments in our National News section.

COVID-19 Updates

Thanks for your positive feedback on our support to you with the implications of COVID-19. We hope our weekly updates remain useful. You can access the updates issued this month [here](#). Areas we will be focusing on soon include:-

- Arrangements for working in the new post-lock down era
- Considerations of the impact on BAME employees
- Accessing useful reports and information from the workforce data you provide

E-mail Sam Maher or Lisa Butterfill if you would like to be involved in these, or other issues related to the workforce implications of COVID. You can continue to contact them with any COVID-19 related issues or queries – these will inform national guidance.

Mediation Support - Virtual

Mediation is one of the services that EMC provides which councils find particularly valuable, given our independence.

Over the past few weeks EMC colleagues have been developing our mediation support offer, so that our qualified and experienced mediators can support authorities virtually. We are already working with authorities in this way and for more information on mediation and how this might work for you please contact Lisa.Butterfill@emcouncils.gov.uk

Projects with Local Authorities

During June we have continued to provide support to councils, adapting arrangements to fit with the current social distancing restrictions. Projects have included:-

- Psychometric Testing and Selection Advice for Senior Officer Role
- Coaching
- Chief Executive Appraisal Support

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

Sam.Maher@emcouncils.gov.uk

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Learning & Development

Virtual Learning and Development Network

The regional Learning and Development network took place on 25 June. Participants shared information on current and future priorities, including supporting agile working, apprenticeships, wellbeing and remote induction.

The network will meet again in the autumn and will feature sessions focussed on the following areas:-

- agile working, strategies and support programmes;
- performance management and appraisals;
- equalities training.

For more information on this network contact

Kirsty.lowe@emcouncils.gov.uk

Agile & New Ways of Working - Action Learning

Over the last few months, we have experienced a rapid pace of change, affecting both our work and home environment. This has required people to react, plan and do at a speed that may be overwhelming and all-consuming. The context means we need to think and behave differently as colleagues and managers.

EMC has been asked to develop a series of Action Learning sets designed to support both managers and employees with the challenges faced by the rapid transition to agile working that we have seen since March.

Action learning will provide an opportunity for individuals to reflect on where they are now, and what they have learnt from the experience. It focuses on areas where individuals want to make progress, perhaps exploring work challenges where they feel stuck, or need space to be able to refocus and move forward.

Based on our experience as qualified action learning facilitators, EMC has developed a virtual programme of Action Learning Sets, with each session lasting 2 hours, hosted on MS Teams. In advance those taking part will be supported with pre information and a 45-minute familiarisation, question and answer session.

For more information on the EMC Virtual Action Learning offer contact

Kirsty.lowe@emcouncils.gov.uk

How a crisis influences behaviour, 9 July & 16 July 2020

In July EMC are hosting two virtual workshops on 'How a crisis influences behaviour'. One workshop is aimed at managers and the second is aimed at coaches. These workshops have been filling up fast, a few places remain on 15 and 16 July, further details below.

What the workshop will explore - When we are tired or under stress our behaviour can change. We can over-play strengths, demonstrate lowered emotional intelligence, and use 'back up' behaviours that are somewhat dysfunctional. During Covid-19 we've seen examples of these behaviours. They are amplified by 'social proof' as we collectively navigate our way through one of the greatest crises we've faced in recent history and compounded by recent social unrest.

During this session we will explore:-

- Covid-19 as a 'crisis': how do we typically react and respond in crisis?
- Emotional hijack: how a crisis impacts our emotional intelligence
- Overplayed strengths: too much of a good thing
- Social proof: How during times of crisis we are so influenced by others, and why this matters
- The impact of Covid-19 on motivation
- Helping people to build their resilience and remain optimistic

This will be an interactive session where you will have the opportunity to reflect on and explore the behaviours you have observed during lockdown, share your experiences and ask questions.

- **Manager workshop** - details or to book a place [here](#).
- **Coach workshop** - details or to book a place [here](#).

Contact Details

For further information about any of our work please contact the Team. Email:-

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In Deep with Darren

Darren Newman this month focuses on the Bradford factor of measuring attendance

The Bradford factor is a method of measuring attendance that places emphasis on the frequency of an employee's absence rather than its duration. In its most common form, the number of absences in a set period is squared and then multiplied by the total number of days absence. So an employee who has one absence of 10 days has a score of 10 ((1x1)x10) and an employee who is absent on five occasions for 2 days each time has a score of 50 ((5x5)x10). Obviously, the score in itself is just a number. The controversy comes with what employers choose to do with that score and how it is used as an absence management tool.

As an aside, no-one really knows how the Bradford factor got its name. It is generally said that it emerged from research conducted by Bradford University in the 1980s – but no-one has ever managed to track down the original research. The name has stuck however, giving a veneer of academic respectability to what is, after all, a pretty crude way of measuring absence.

Earlier this year the Bradford Factor attracted some attention as far afield as Cyprus. The Cypriot Data Protection Commissioner fined an employer EUR 82,000 for using an HR software system that automatically calculated and reported on an employee's Bradford Factor score. The Commissioner held that there was no legal basis for processing personal data in this way. Is this a development that should worry employers in the UK?

In a word, no. When I first heard about the case, I assumed that it was something to do with the automated processing of personal data. Article 22 of the GDPR says that an individual has the right not to be subjected to a decision based solely on automated

processing except in very limited situations and with appropriate safeguards. But of course the production of a Bradford Factor for an employee – even if generated automatically – is not a decision that affects them in any way. The employer may do nothing with the information or may simply use it as part of an overall assessment of the employee's attendance. As long as no decision is taken without human intervention then Article 22 will not apply.

As it turns out, the Cypriot decision was not concerned with Article 22 at all. Instead it was a decision based on Article 9 of the GDPR which prohibits the processing of 'special categories' of personal data. This is basically the equivalent of the 'sensitive personal data' under the old Data Protection Directive and includes information about a person's health (other categories include ethnic origin, sexual orientation and trade union membership). The Employer was found to have been processing data concerning the health of employees with no legal basis. Article 9(2) sets out the circumstances in which special categories of personal data can be processed and this includes processing that is necessary for 'the assessment of the working capacity of the employee' but this was found not to apply in this case.

It is difficult to appreciate how the Commissioner reached this decision because the full ruling is only available in Greek. But the fundamental problem seems to me to be its assumption that a Bradford Factor score amounts to personal data concerning an employee's health. One of the major criticisms of the Bradford Factor is that it takes no account of any underlying causes of the employee's absence. It tells you how often they have been away from work, but it tells you nothing at all about why. If I told you that Fred had a Bradford factor score of 75, how much information about his health would I have given you? Practically none at all. You could make some guesses, of course, but it is perfectly possible that Fred is quite healthy and just enjoys throwing the occasional sickie.

In the UK context it is interesting to note that the Information Commissioner's Employment Practices Code¹ (which was based on the pre-GDPR law)

¹ https://ico.org.uk/media/for-organisations/documents/1064/the_employment_practices_code.pdf



encourages employers to place more emphasis on recording attendance than on recording sickness. From a data protection point of view a simple Bradford Factor score should be less of a problem than a list of an employee's specific absences and their cause.

But of course employers are entitled to process data about an employee's health. As Article 9(2) expressly acknowledges, the processing can be justified by the need to assess the employee's capacity for work. Article 9(2)(b) also allows processing of health data if it is necessary to meet the legal obligations of the employer. Since an employer that dismisses an employee for absence without investigating the medical position will be at risk of claims for unfair dismissal and disability discrimination, it should be uncontroversial that some processing of data about an employee's health is necessary and justified.

Of course, an employer needs to ensure that this data is handled carefully and kept secure. It is worth being careful, for example, about the extent to which medical details are discussed in internal emails or other correspondence. But there is room for common sense. An email sent around a team saying 'Jenny will not be coming in today as she has a cold' is a flagrant breach of Article 9 unless Jenny has given her express consent to that email being sent. But the chances of an employer being prosecuted by the Information Commissioner for doing that are minimal.

The risks of using the Bradford factor in absence management should not be ignored – but I would place data protection pretty far down the list. Of more concern is the unfairness or discrimination that may result from placing too much emphasis on this one metric, without looking at an employee's specific circumstances. A high Bradford Factor score might reasonably prompt an employer to look into an employee's absence to see if it needs addressing, but it should not generally operate as an automatic trigger for disciplinary action. In particular an employer will need to consider whether frequent absences have an underlying medical cause. If they do, then the employee may well have a disability which will mean considering the need for reasonable adjustments.

But provided an employer takes a balanced approach - and always looks at an individual's circumstances before making a decision - the Bradford Factor can

have a role to play in absence management. Although not, it seems in Cyprus.

More information can be found on Twitter:

[@daznewman](#)

National Developments

Update on Pay Negotiations

You will recall that the National Employers made a final pay offer of 2.75% plus an increase of 1 day to the minimum national annual leave allowance. Unison, GMB and Unite are consulting their membership on the offer. GMB will be consulting without a recommendation on whether the Employers' final offer should be accepted or rejected. Its consultation will run to the end of July. [UNISON](#) is consulting on the same basis and the timescale will be similar to GMB's. [Unite's](#) consultation (with recommendation to reject) runs through to mid-August. This means that a conclusion to this year's pay round is unlikely until end of August at the earliest (assuming all three unions are able to reach a joint position on whether to accept the offer).

The Unions have also written to MHCLG to request additional funding for the sector. A copy of their letter and the response from MHCLG dated 24th June is provided through the links below:-

Letter to MHCLG on 26 May 2020 - [here](#).

Letter to Trade Unions, 24 June 2020 - [here](#).

Christmas & New Year working arrangements

As we emerge from a heatwave, thoughts turn inevitably to Christmas. As is customary when Christmas falls over a weekend, the NJC has issued a circular setting out guidance on working arrangements over the Christmas & New Year holidays. This can be found [here](#).



Likely teachers' pay timeline for 2020

Please see below information regarding the timeline for teachers pay which was sent to HR Schools Leads in councils.

The likely timetable for announcing the Government's decision on the STRB recommendations is likely to be made in the week commencing 20 July with an 8 week consultation period on draft STPCD (School Teachers pay and conditions document) taking us to around the middle of September.

The teachers' pay order then needs to be laid before parliament for 21 calendar days, taking us into October before the 2020 pay award and any changes to STPCD (back dated to 1 September) are finally agreed.

The full update can be found [here](#).

JNC for Coroners – Joint circular 64

The latest JNC for Coroners joint circular number 64) the details of which can be found on the circular [here](#). This Circular sets out the constitution applying to the JNC for Coroners which has been updated in line with the 2018 national review of coroners' pay.

The circular will also be available on our website [here](#), alongside previous coroner circulars.

Settled status for EU citizens - Reminder

The pandemic has taken Brexit out of the headlines somewhat but, as you are aware, the process for applying for settled status for EU citizens is still ongoing.

Councils may have staff and also vulnerable service users who will still need to apply. It may be helpful to remind affected people at this stage. The application process can be found [here](#).

EU Social Partners Autonomous Framework Agreement on Digitalisation

The new Autonomous Framework Agreement on Digitalisation which has been reached by the EU "Cross Sectoral" Social Partners; CEEP, Business Europe, SME United and the ETUC. This can be found [here](#).

While the UK is in the transition period of leaving the EU any Directives would apply here until the terms of Brexit are agreed.

Apprenticeships

LGA Apprenticeship Newsletter, June 2020

The latest LGA newsletter can be found [here](#). This month it includes:-

- COVID-19 Update
- LGA Summer Apprenticeships Webinar Programme – 5 webinars for 20/21 which will be taking place over the summer.
- Apprenticeship Standards: Latest Updates
- Southampton City Council Make list of Top 50 Employers for Apprenticeships
- Apprenticeships in the News

