



HR in the East Midlands

March 2023

We expect you are welcoming Spring as much as we are – the rain is feeling warmer already! In this issue, as well as the useful collection of HR and L&D/OD news, we feature the East Midlands Challenge which took place this month. The event was a huge success with great feedback from the 100+ participants. The talent in the East Midlands shone through, with the best results seen in any region in the history of the event. Thank you to everyone who took part, and particularly those of you who supported as assessors. Darren's article looks at age discrimination and if avoiding costs of early retirement could be justified.

Regional Employers' Board and Joint Council Update

The Regional Employers' Board and Regional Joint Council had meetings on 8th March to discuss workforce issues at a regional and strategic level.

In both meetings, the focus was on **new ways of working** and on the challenges being faced in **attracting and retaining staff**. We would welcome any examples of practice, policies and arrangements that we could share with other councils. In addition, if there are any challenges or issues you are facing with new or hybrid working arrangements, then those will also be helpful in flagging with us – these will be anonymised. Please email Sam.

The RJC agreed that joint guidance would be useful and so it was timely that this has now been produced at national level. (The Circular relating to this was distributed last week - see information and the link to a copy in our National News section.)

On attracting and retaining staff, the RJC agreed that it would be useful to understand the extent of the challenges through supporting data. We would therefore appreciate hearing from you on any indicators you currently collect/report on that demonstrate the level of the challenges being faced in terms of workforce capacity, recruitment and retention. Vacancy levels, labour turnover, applicant numbers, agency spend and/or ratio of agency staff may be relevant indicators. We will be conducting a survey on these, but if you have suggestions on what information would be useful and not onerous for you to provide, please email Sam at sam.maher@emcouncils.gov.uk

Projects with Local Authorities

During March, EMC has supported councils with:-

- **Psychometric assessments for senior recruitment**
- **Interim HR management**
- **Chief Executive appraisal facilitation**

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

Sam.Maher@emcouncils.gov.uk

Lisa.Butterfill@emcouncils.gov.uk

Learning & Development

EM Leadership Challenge – Highest Calibre Ever!

On 16th March over 100 people participated in our leadership challenge at Leicester race with resounding success! The feedback from the event has been incredible, with teams posting their thoughts on social media – examples are shown below.

Taking on the role of senior management, teams were required to prioritise a series of challenges, gaining exposure to issues outside of their normal work and expanding their knowledge and skill set in the process.

Whilst the focus for the day is on learning and development, there's also an element of competition and below are the results of the winning teams:

Best overall team: **Newark & Sherwood District Council**

Behaviours Award: **Melton Borough Council**

Leadership Award: **Newark & Sherwood District Council**

Council Communications Award: **South Kesteven District council**

Shining Star Award: **Shanice Senghor, Blaby District Council**

Special congratulations to our winning teams and to those also highly commended:

Best Overall Team: Highly commended

- **Melton BC**
- **Oadby and Wigston BC**
- **South Kesteven DC**
- **Wakefield Council**

Behaviours Award: Highly Commended

- **Newark and Sherwood DC**
- **South Kesteven DC**

Communications Award: Highly Commended

- **Oadby and Wigston BC**
- **Derby City Council**

Leadership Award : Highly Commended

- **North Northamptonshire Council**
- **North Kesteven DC**

Shining Star: Highly Commended

Rhiannon Davies, North Kesteven DC
Nathan Greenwood, Gedling Borough Council
Lauren Grosvenor, Lincolnshire County Council
Hayley McHugo, Harborough District Council

Special mentions were also awarded to:

Harborough DC for their presentation and **North West Leicestershire DC** for their media interaction.

The challenge director, Richard Wills, commended everyone, in the awards ceremony in the evening, for all their hard work demonstrated by the number of individual “shining star” nominations exceeding the normal average at other events by three or four times!

“The East Midlands Challenge has also had the highest calibre of teams and delegates taking part that we’ve ever seen in all of the Challenge series”.



The purpose of the Challenge is to give aspiring senior leaders of the future an opportunity to test their ever-developing skills in a real life but safe environment.

Here's just a taste of what some of the participants had to say:



And the feedback kept coming...

Jon Owst (He/Him) • 3rd+
1w • Edited • 📎

A fabulous day with colleagues at the East Midlands Challenge.

A huge thank you to [East Midlands Councils](#), Rich, Dave, and all of the facilitators for putting on such an immersive experience. I don't remember taking a breath before about midday.

Wonderful to see [Oadby and Wigston Borough Council](#) up there shortlisted for the best team award, and again for best communication.

Congratulations to [Newark and Sherwood District Council](#) for taking home the big prize.



Sally Moseley from Oadby and Wigston BC wrote a fabulous article for their staff newsletter saying:

"We all thoroughly enjoyed the day and felt it really helped with our own personal development, networking, and decision-making skills along with lots of laughs throughout the day..."

We were competing against many other local councils (and some from much further afield) to try and bring the Council back from not only financial disaster but also improve a dire housing situation and a crime hotspot. "The Challenge is a great opportunity to gain exposure on what it's like to be a member of SLT by taking over a 'Council' that has had its previous SLT "removed".

For any questions or further information please contact lisa.butterfill@emcouncils.gov.uk

Storm Phillips • 2nd
Principal Project Officer - Developer Contributions
3d • Edited • 📎

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Felt privileged to take part in the East Midlands Tri-Sector Challenge at Leicester Racecourse a week ago today!
I'd encourage anyone that has the opportunity to "just go for it" (if you want to 😊!)

[North Northamptonshire Council](#)
[#challengeyourself](#) [#TriSectorChallenge](#)

Graeme Kane MA (Hons) MBA • 2nd
Strategic leader within local government
1w • 📎

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I love getting involved in the Tri-Sector Challenge. This year we have a team in the East Midlands regional game. A great experience for those involved. [North Northamptonshire Council](#) [Storm Phillips](#) [Tyler Bennett](#) [Rich Wills](#) | ...see more



For all the information relation to the 2023 EM Challenge please visit [here](#)

Thank you to all our teams and the cast of assessors, without whom this event would not be possible!

Don't miss out next year: save the date - 23rd April 2024!

We are already planning next year's event and can confirm that it will be taking place on **Tuesday 23rd April 2024** – so please save that date! We will be back at Leicester Racecourse.

This Challenge has been developed so that all teams from the public, private and voluntary sectors can compete against each other on as near-level playing field as possible so please feel free to share with other partner organisations who you think may enjoy and benefit from the challenge!



In Deep with Darren

This month, Darren Newman looks at age discrimination and justification, following an EAT case where the employer sought to avoid the costs of early retirement in a redundancy.

Age is unique among the nine protected characteristics in the Equality Act. It is the only one where, in a claim of direct discrimination, the employer has a general defence of justification. If you can show that in treating someone less favourably on the grounds of age you were adopting a proportionate means of achieving a legitimate aim, then there is no discrimination. That is simply not an argument that you can use in relation to sex, race, or any other protected characteristic.

But when is age discrimination justified? It is not a straightforward question.

In *Cook v Gentoo Group* (EAT, January 2023) the employer probably thought that it had very sound reasons for what it did. They were a social housing landlord with charitable status and Mr Cook was Head of Compliance for their Property Services. They needed to make him redundant and the problem they faced was that if they followed their own internal procedures in full then the process would take until after he had turned 55. For most employers this would not matter – but the Gentoo Group were members of the Local Government Pension Scheme and the redundancy of a 55-year old in Mr Cook's position would be very expensive. They estimated that they would have to fund his enhanced benefits to the tune of some £80,000. Rather than face that, they rushed through the redundancy process so that Mr Cook was dismissed while he was still 54.

The Tribunal found that Mr Cook's dismissal was inevitable, but the process adopted by the employer was unfair because it failed to follow its own procedures and rushed through the procedures that were in place. Crucially, had the employer behaved reasonably, then Mr Cook would have been 55 when his employment came to an end. Because there is no cap on discrimination compensation it was obviously important to him to establish that his dismissal was

also discriminatory because then he would be able to recover full compensation for his lost pension rights.

The Tribunal actually found that there was no age discrimination in the dismissal – but, as the EAT held, this was clearly wrong. The only reason the redundancy process was shortened was that Mr Cook was 54. If he had been either 53 or 55 then following the normal redundancy procedure would not have presented a problem. The reason the procedure was not followed was quite clearly his age. I am frankly baffled that the Tribunal managed to find otherwise, but we don't need to dwell on the point.

This, however, is where the question of justification comes in. The Tribunal had looked at that – just in case they were wrong about finding there was no discrimination at all. They held that the employer had been justified in seeking to avoid exposing themselves to the extra expense involved in making Mr Cook redundant after his 55th birthday. They held that that was a 'proportionate means of achieving a legitimate aim'.

But avoiding additional expense does not necessarily justify age discrimination. There are two reasons for this.

The first is that the courts do not regard it as proportionate for an employer to opt for the discriminatory option just because it is cheaper. Saving money alone is not a 'legitimate aim' in this context – there needs to be something more. The Tribunal thought that in this case the employer could point to the need to keep the Regulators happy.

The Homes and Communities Agency had previously designated the Gentoo Group as 'non-complaint' – identifying weak governance and internal control when agreeing severance payments to outgoing executives. The Tribunal felt it was proportionate to rush through the redundancy to avoid renewed criticism and being accused of wasting money that should have been spent on charitable purposes.

The weakness of this argument is that the payment to the LGPS would not have been some overly generous ex gratia payment. It was simply a result of Mr Cook's entitlement under the pension scheme. The employer



was not seeking to prevent Mr Cook from enjoying an undeserved windfall; they were preventing him from enjoying the full benefits of the pension scheme by acting in breach of their own procedures. It is difficult to imagine that Regulators would have criticised the employer for not doing that.

The second reason that avoiding expense is not a good ground for justification is that not every business reason will count as a 'legitimate aim' in an age discrimination claim.

The provisions which allow for the justification of direct age discrimination are based on Article 6 of the EU Equal Treatment Framework Directive. Article 6 provides that legitimate aims include 'legitimate employment policy, labour market and vocational training objectives'. In *Seldon v Clarkson Wright and Jakes* (2012) the Supreme Court held that this effectively limited the scope the 'legitimate aims' that could be relied upon to aims with an element of public policy to them – consistent with the social policy aims of the State.

Legitimate aims might include – as they did in that case – providing for compulsory retirement so that younger employees could progress through an organisation. But it is difficult to see how the employer's objectives in Mr Cook's case could be made to fit within that framework and it was not a point that the Tribunal had considered.

Quite apart from these two points, however, the Tribunal had also failed to carry out the balancing exercise needed in deciding whether the discrimination is 'proportionate'. It is not just a question of whether the employer has a legitimate aim lying behind what it has done. The question of proportionality requires its interests to be balanced against the discriminatory impact of the measure on the employee.

So, in Mr Cook's case the question was whether the employer's legitimate aim (assuming it could identify one) outweighed the impact on the employee of being denied the pension entitlement that he would have enjoyed if the employer had followed its own redundancy procedures. Put like that, it does seem that the employer will be facing an uphill battle in seeking to justify what they did. Their understandable haste to avoid an onerous payment to the pension fund may prove to have been an expensive mistake.

National Developments

National Pay & Conditions

NJC Guidance on Remote and Hybrid Working

The NJC have been working on developing joint guidance and information relating to remote/home and hybrid working arrangements. A circular containing this guidance and links to further information was issued on 24 March and can be found [here](#).

National Pay Negotiations

Just in case you missed it, on 8th March EMC distributed a Circular that was issued by the National Employers providing an update on the national pay negotiations following a meeting they'd had with the Joint Unions that day.

This informed councils that the Joint Unions had rejected the Employers' full and final offer has been rejected and that unions will be balloting their members, providing an indication of the timescale for their ballots. The Circular can be accessed here: [Joint Negotiating Committee for Local Authority \(emcouncils.gov.uk\)](https://emcouncils.gov.uk/joint-negotiating-committee-for-local-authority)

National Living Wage Forecast

The Government's National Living Wage (NLW) policy has a significant influence on the considerations for negotiations for local government, as Employers aim to ensure that any offers will be compliant with the NLW when it is reviewed on 1st April each year.

You will be aware that the NLW will increase on 1 April to £10.42. The bottom rate for local government services (Green Book) and Craftworkers on that date will be £10.60 (pending agreement on the 2023 pay offer, which would achieve a bottom rate of £11.59).

Last week the Low Pay Commission's (LPC) issued its consultation in which it published its latest forecasts for the NLW for 2024. The main point to note is that the forecasts are up again on previous estimates.

The upper estimate of the projected rate for April 2024



is now £11.43, which is 8p higher than November's forecast (and 10p higher than LPC's forecast from this time last year).

The central projection of £11.16 is also up; 8p higher than the £11.08 of its November forecast (and 21p higher than the £10.95 forecast from this time last year).

The inclusion of both sets of the LPC's forecasts in 2022 serves to illustrate how much they change, albeit in one direction.

In terms of the NJC 2023 pay offer, this new forecast will leave just 16p headroom from the top-end forecast. It is advisable to use the top-end forecast, as in recent years it has been closest to the actual NLW announced in the Autumn.

This year we will have 18p headroom on 1 April (pending the 2023 pay deal), illustrating that despite a pay offer that increases the national paybill by 6.42% and is proportionately higher at the bottom end of the pay spine, our sector remains just about standing still in terms of our proximity to the NLW.

As the National Employers pointed out when the pay offer was announced on 23 February, at the bottom end, employees would have had a 22%/£4000 pay rise in two years. However, that has achieved almost nothing in getting us ahead of the NLW, as is the ambition.

Regional Response to Consultation on Review of Holiday Entitlement

As mentioned in previous Bulletin issues, the Government conducted a consultation on changing legislation on the entitlement to statutory leave for those working on a part-year/irregular basis. This follows from the Supreme Court's ruling in the *Brasel* case.

Based on views shared with us by local authorities, EMC provided a regional response to the consultation. Our response supported a change to the legislation to provide equity and also enable a way of calculating that would help with clarity and not lead to increased administrative/payroll burdens.

T Levels Newsletter

In this March edition of the T Level Newsletter, you can hear how an industry placement brought fresh perspective to Bradford Council and how Wigan Council has used placements to establish a talent pipeline. 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.

Last chance to be part of the National Graduate Development Programme (NGDP) in 2023

We've reached the deadline to sign up to the just a few days until the deadline, it's not too late to **sign up to the NGDP** for 2023.

The NGDP is the LGA's flagship graduate scheme, which places high calibre graduates in councils across the country, helping to build capacity and develop the future leaders of local government. If you are interested in participating but haven't signed up yet, then contact the national scheme directly at: ngdp@local.gov.uk

Early Careers Toolkit

The LGA's **early careers toolkit** is now live. It includes ideas for working with providers, an early careers strategy template and links to useful reports. The aim is to equip councils with information and resources they need to promote local government amongst providers and young people.

Youth Employment UK Platform

A platform on working in local government has gone live on the Youth Employment UK website. It is aimed at young people and educational providers with the objective of promoting our sector and the vast number of careers available within it and includes good case studies.

It can be accessed here: ['Working in local government'](#)

