

news and articles of special interest for  
headteachers and senior managers

## Welcome...

Our start to the New Year began with many schools and academies facing up to unprecedented budgetary issues which in some cases will involve potential restructure and/or redundancies with attendant uncertainties for staff. Our advice to all clients facing these challenges is to be proactive, have clear communications in place, take a robust approach and seek early HR advice as appropriate in managing these potentially difficult and delicate situations constructively.

Nationally there are more changes in government guidance anticipated for implementation later this year, not least (further) amendments to 'Keeping Children Safe in Education' for which the draft guidance document can be found on the government website. Another proposed change is in the tax on payments that can be made in exit arrangements which will be likely to impact on the negotiations for settlement agreements and COT3s.

### Safeguarding – update

On 22 December 2015 the Department for Education launched a consultation on further proposed changes to the 'Keeping Children Safe in Education 2015' document. The results of the consultation and the Department's response to this will be published on 'gov.uk' in spring 2016. The intention is that any revisions to current guidance will come into effect for the beginning of the new school year in September 2016. Draft proposals include:

- changes to the "Summary" to reinforce the importance of Part One as a starting point for all staff in schools and colleges to read **and understand** (*the proposal is not clear as to how an 'understanding' might be documented*)
- increasing focus on the importance of a child-centred and coordinated approach to safeguarding

### In this Issue:

- ✓ Safeguarding update
- ✓ Recruitment checks
- ✓ Sickness and disability
- ✓ Academy governance
- ✓ Local government NJC pay
- ✓ Exit payments and tax
- ✓ DfE consultation on staffing regulations
- ✓ Fixed term contracts
- ✓ Immigration Bill 2015/2016
- ✓ Professional standards
- ✓ Shared parental leave
- ✓ Monitoring employees at work

- emphasising further the role that individual staff play in safeguarding (and the fact it is **everyone's** responsibility)
- highlighting the importance of early help (and how this sits in the wider safeguarding system)
- highlighting the importance of data sharing
- providing clarification on the role of the designated safeguarding lead (and cover for this role)
- additional text to cover children with special educational needs and disabilities.

The draft guidance document is available from the 'gov.uk' website.

Following an amendment to the Serious Crime Act on the 29th December 2015, coercive or controlling behaviour has now become a criminal offence, punishable with up to 5 years in prison.

This news provides an opportunity to discuss healthy and unhealthy relationships with eg teenagers in your establishments. The 'Think U Know' website has published an age-appropriate article titled '*Emotional abuse is now illegal – but what is it?*' ■



### Point of Interest ✓

According to data revealed in a recent Freedom of Information (FOI) inquiry the number of council employees suspended for misusing social media grew last year.

East Riding of Yorkshire Council said it suspended two teachers for befriending pupils on Facebook and said that in one case the teacher had attempted to arrange a meeting with the child via social network. Leeds Council took action against two employees over racial comments they had made online.

## Recruitment checks

**DBS checks** – in a recent court case, two individuals who claimed their careers were being blighted by having to disclose their minor criminal convictions to employers won their case at the High Court. Their legal team said that they were being unfairly disadvantaged throughout their lives by convictions for minor criminal offences committed years beforehand.

You will remember, in 2013 the government amended the DBS scheme to introduce a filtering process in response to a Court of Appeal ruling. As a result of this, *single* convictions for non-violent, non-sexual offences that did not lead to a custodial (or suspended) sentence are no longer disclosed once 11 years have elapsed (or five and a half years if the person was under 18 at the time of the offence).

In this court case Lord Justice McCombe said it was not justifiable or necessary for any individual to have offences disclosed indefinitely, from many years ago, merely because there is more than one minor offence. He has directed the government to make submissions to address faults in the system, in advance of the court making its final order.

**Checks on prohibition from management** – just a reminder about these checks which only apply to independent schools, free schools and academies. Checks must be made under section 128 of the Education and Skills Act 2008 which bars individuals from taking part in the management of an independent school. The term 'management' applies to all members of the senior leadership team and to those teachers who carry a department headship *whether or not they have a teaching commitment*.

It is not necessary for existing staff to undergo a section 128 direction (even if they are promoted internally to a post for which a check is needed). ■

## Sickness and disability

Following a recent case law decision regarding the dismissal of an employee for sickness absence related to a disability, employers may no longer need to adjust the trigger points where absence is disability-related. The duty to make reasonable adjustments, whilst extensive in other circumstances, need not include this.

The EAT view was that the proposed adjustments to trigger points would not have been reasonable as they would "allow a buffer to be continually in place" which would prevent the trigger point ever being reached. As the tribunal pointed out, this would amount to a perpetual extension of sickness absence, and would not assist the disabled employee to return to and remain in work. Senior managers are advised to seek HR support and guidance before taking any decisions in this difficult and sensitive area. ■

## Academy governance

An academy chain (E-Act) with 23 academies nationwide has announced it is to abolish local governing bodies (known as LGBs), to be replaced with one central body.

The Department for Education has stated: "In Multi-Academy Trusts like E-Act, the trust are responsible for the organisation's management and administration of its schools. As part of this it is their responsibility to ensure strong governance of their schools so standards remain high. We trust them to decide on the most appropriate arrangements for their trust. They may choose to delegate duties to local governing bodies, or equivalent, but trustees remain responsible. E-Act has reviewed its governance arrangements and is planning to change its regional and local governance structure."

The Chief Executive of the National Governors' Association commented: 'Local governing bodies (LGBs) in a MAT are not the same as governing bodies of maintained schools, but are in effect committees of the MAT board. The MAT board does not have to delegate decision making to LGBs and can choose not to have LGBs at all'. She went on to say that in some MATs where the trustee board has not developed a clear scheme of delegation (or has failed to communicate it properly) there can be confusion.

When deciding on becoming a MAT, your governing board needs to understand the implications of this advice in relation to governance. ■

## Local government – NJC Pay

On 9 December 2015 the National Employers made a final two-year pay offer to the Trade Union Side covering 2016-2018. The offer was constructed to take account of the views clearly expressed by councils for a headline increase of one per cent on 1 April 2016 and a further 1% increase on 1 April 2017. In addition, the National Employers offered higher percentages to those on lower pay points due in part to the imminent introduction of the National Living Wage on 1 April 2016. UNISON and Unite are balloting and recommending their members reject the offer despite this being a final offer.

On 1 April the National Living Wage will be introduced at a rate of £7.20 per hour which means that the current bottom three pay points on the 'Green Book' pay spine will be below that statutory minimum level. The current hourly rate of SCP6 is £7.06 (£13,614); SCP7 is £7.11 (£13,715) and SCP8 is £7.19 (£13,871).

Therefore, in the absence of the NJC reaching a pay agreement to be implemented in time for 1 April, local authorities are being advised to begin making preparations for employees currently paid

on SCPs 6, 7 and 8 to have their pay increased in accordance with the National Living Wage which equates to £13,891 per annum with effect from 1 April. This updated figure should continue to be paid until such time as the NJC finalises a pay agreement. ■

### Exit payments and tax

The government has announced that it intends to introduce a £95,000 cap on the total value of exit payments made to public sector employees. The cap will apply to all redundancy and ex-gratia payments as well as payments in lieu of notice, holiday and benefits.

Meanwhile, a different set of Regulations has now confirmed that a proposal on clawing back redundancy payments made to high-earning public-sector workers who return to work in the same sector within 12 months will be introduced on 1 April 2016.

### £30,000 tax exemption

The government want to reform (and simplify) the existing tax and NIC exemptions for termination payments, and agrees with the Office of Tax Simplification (OTS) that the first step is to remove the distinction between the tax and NIC treatment of contractual and non-contractual termination payments. Should this concern you as an employer? The answer is (emphatically) yes!

Currently, when an employee leaves under a settlement agreement, the first £30,000 of an agreed figure can be received free of tax, and this can act as a considerable incentive for the individual to accept an offer 'in compensation for loss of office'.

The government has just finished consulting on these changes – it proposes to scrap the current tax exemption so that, although the (departing) employee may subsequently be able to reclaim some (or all) of the tax, they will no longer receive the payment tax-free, and this may seriously diminish the attractiveness of settlement (or COT3) agreements. ■

### DfE consultation on staffing regulations

The recent consultation document from the DfE covers revised non-statutory guidance on 'Staffing and Employment Advice for Schools' which has been prepared to replace the department's current **statutory** 'Guidance on Managing Staff Employment in Schools' (which is likely to be withdrawn in due course). The proposed guidance will also cover academy trusts. Consultation closes on 10 February 2016.

The new guidance (provisionally from September 2016) is designed to help employers in all schools with staffing and employment matters, and to inform their decision making. It continues to advise on matters contained within the School Staffing (England) Regulations 2009 and on wider staffing and employment issues. ■

### Fixed term contracts

Many employers try to use fixed term contracts as the equivalent of a probationary period (before awarding the individual a permanent contract). This is poor employment practice for a number of reasons, one key point being that if a contract is not renewed this is considered (in law) to be a dismissal. If the employee has (minimum) 2 years' service (or any length of service if the employee has a protected characteristic) the employer needs to avoid treating the individual less favourably than permanent employees and accordingly show that there is a 'fair' reason for not renewing the contract.

If you want to end the contract early this depends on the terms of the contract. If it doesn't state anything about being ended early, the employer may be in breach of contract. If the contract specifically states that it can be ended early, **and** the employer has given proper notice, then the contract may be terminated ahead of schedule (but in school contracts generally no such provision exists).

However, be warned that if the contract itself does **not** allow for early termination (other than when the employee has committed an act of gross misconduct) the employee may be entitled to be paid what they would have earned during the remainder of the contract term.

Good practice suggests that if you are not intending to renew a fixed term contract the manager should meet with the employee in good time (perhaps 2 to 3 months) before the end date to inform them that the post will end on the given date and advise them of the reason for the non-renewal.

It should be noted that if an employee continues working past the end of a contract without it being formally renewed, there is an 'implied agreement' by the employer that the end date has changed. You are therefore encouraged to monitor the types and length of contracts that are issued to ensure compliance with legislation. ■

### Immigration Bill 2015/2016

'The Immigration Act 2014 put in place many effective measures intended to reduce illegal immigration and making it more difficult for illegal migrants to live and work in the UK. This (*proposed*) Bill also incorporates a number of new measures not covered under the 2014 Act for example, a raft of new measures to deny illegal migrants access to the labour market; these measures make the UK a less attractive place for illegal migrants and those who seek to exploit them' (Home Office December 2015).

Such actions include increasing both the consequences for employing illegal migrants and the sanctions for working illegally. The Act extends the criminal liability to cover employers who 'have reasonable cause to believe' (as opposed to actually know) that they are employing an illegal worker, coupled with an

increased sanction of up to 5 years' imprisonment. This places greater importance on ensuring that appropriate checks are undertaken when recruiting.

The Bill also introduces an English language requirement for all customer facing public sector workers, although one would argue that schools and academies already try to recruit the best people for their jobs. ■

## Professional standards

**School business managers** – for those who may not have noticed, the NASBM Professional Standards have recently been published. These standards set out the core and specialist areas of competence required to be successful in business management within schools and are designed to assist those currently working in, or aspiring to work in, the profession of school business management to enable them to perform their role as expertly as possible.

According to the NASBM *'These standards supersede the SBM Competency Framework as the blueprint for effective practice and the reference point for updated qualifications'*.

The NASBM have been working with stakeholders, including ASCL and NAHT, who have endorsed the standards, and this will encourage embedding with senior leadership teams. These standards are available to download from the NASBM website.

**Teaching assistant standards** – as you may be aware, there were longstanding plans for standards to be drafted by a panel led by school leaders. However, in October 2015 Nicky Morgan decided not to publish the draft professional standards for teaching assistants produced by this panel.

At the time, Nick Gibb (Minister of State for Schools) said in his statement *'Ministers have considered the latest evidence on the effective deployment and professional development of teaching assistants. In the light of this evidence, the Government believes that schools are best placed to decide how they use and deploy teaching assistants, and to set standards for the teaching assistants they employ. The Secretary of State has therefore decided not to publish the draft standards'*.

educateHR possesses a copy of the proposed standards which the government has decided not to adopt – don't hesitate to contact Gill Meeson if you would be interested to see a copy.

We have often said that, although there are currently no national standards for teaching/support staff, other materials, such as national occupational standards, are available which headteachers may care to access for support in relation to issues such as appraisals. Give Gill Meeson a call if you want further advice and guidance on using such standards in appraising support staff. ■

## Shared parental leave

In case anyone has missed the Chancellor's announcement – it is proposed that grandparents will be given the right to take paid time off work for childcare under government plans to extend the existing shared parental leave from 2018. ■

## Monitoring employees at work

An employee was dismissed for breaching the company's internal regulations, which stated that it was strictly forbidden "to use computers, photocopiers, telephones, telex and fax machines for personal purposes". However, the employee had been using Yahoo Messenger (set up for work purposes) to chat with his family (in breach of the company's regulations) as well as professional contacts. Therefore the judges said the employer could monitor the messages because it believed it was accessing a work account.

The European Court of Human Rights said that it was "not unreasonable that an employer would want to verify that employees were completing their professional tasks during working hours".

However, the ECHR also made clear in its judgment that it would not be acceptable to carry out unregulated snooping of staff's private messages. It said a set of policies must be drawn up to define what information employers can collect and how (for example by monitoring usage etc).

A point to note is that whilst employee monitoring can be justified, it should go no further than is reasonably necessary in the circumstances and employers should not take this as a green light to snoop on their employees. ■

## HR Services

A reminder for those schools and academies that wish to purchase our HR Consultancy/Advisory service – we are continuing to offer this service on a 'pay as you go' basis without any ongoing contractual commitment. This allows you to control your expenditure to suit your individual and budgetary requirements.

However, for organisations that prefer to enter into a retainer (fixed fee) contract for a defined period we are happy to provide competitive quotations on request.

For further information visit our website: [www.educatehr.co.uk](http://www.educatehr.co.uk) or please contact:

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