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### The agenda for today...

Topic	Speaker
Employment Law Update	Tom Atkinson HR Consultant
NJC Pay Award – April 2021	Nicola Coward Senior HR Business Partner
School Diversity Week	Paula Beck HR Business Partner
Performance Management in Schools Post the Pandemic	Sandy Watkins HR Business Partner
LGA Guidance on Travel Abroad	Nicola Coward Senior HR Business Partner
New PACT HR Policies	Nicola Coward Senior HR Business Partner

PACT HR  
Your HR Partner

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Tom Atkinson  
HR Consultant

## Employment Law Update




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### Race Discrimination:

*Alley (UK) Limited v M/S Gehlen (February 2021)*

- Employee was dismissed by his employer due to performance concerns
- However after being dismissed, he raised a complaint that he had been subject to race harassment by a fellow employee
- An investigation was undertaken and established that the colleague had made racist comments and had engaged in so called "racial banter"
- These comments were made on at least a monthly basis throughout 2017, and were heard by other colleagues at the workplace, who did not report these comments
- The employee had informed his manager of the ongoing comments, however his manager didn't take appropriate action and escalate the matter further
- The manager had received race discrimination and harassment training in 2015 which advised on the need to escalate such complaints immediately
- In defending the claim for race discrimination, the Company relied on section 109(4) Equality Act 2010, by stating the company had taken **all reasonable steps** to prevent race discrimination in the workplace




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### Race Discrimination:

*Alley (UK) Limited v M/S Gehlen (February 2021)*

- However, the Employment Appeal Tribunal (EAT) disagreed and the Company failed in its race discrimination defence.
- The EAT accepted that employees had received training in relation to race discrimination and harassment however, the training was out of date, delivered many years previous and was clearly "stale".
- The managers choice of action demonstrated that the training needed to be refreshed.
- The training had made plain to the employees what they should do if they heard unacceptable remarks, yet they all failed to follow that guidance.
- The EAT felt a reasonable step by the employer would be to refresh the outdated, and ineffective training offered to its employees.
- The EAT did not accept that the Company had taken all reasonable steps to avoid harassment in the workplace.




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**Race Discrimination:**

Ally (UK) Limited  
v  
M S Gillan  
(February 2021)



Considerations for Schools

1. This case serves as a good reminder to review and energise any training undertaken in school to ensure it is fit for purpose and meets its key objectives.
2. Audit and review training records for staff, ensuring all refresher training is up to date with appropriate records in place.
3. Ensure quality assurance checks have taken place in relation to school policies and procedures (Whistleblowing, Staff Handbook, Code of conduct/Dignity at work, Bullying & Harassment protocols etc.)

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**Unfair Dismissal, H&S Procedures:**

Mr C Sinclair  
v  
Trackwork Ltd (May 2021)



- Mr Sinclair worked for Trackwork LTD as a Maintenance Supervisor and one of his responsibilities was to implement a new health and safety procedure.
- The company did not inform their staff of Mr Sinclair's health and safety obligations. Consequently, employees began raising concerns as to what Mr Sinclair was attempting to implement, stating he was "overcautious" and caused "upset and friction" amongst staff.
- Subsequently, Mr Sinclair was dismissed for the alleged demoralising impact his actions had caused colleagues at the workplace.
- Mr Sinclair claimed his dismissal was unfair as he was protected under Section 100(1)(a) of the Employment Rights Act. The employee then raised a claim to the EAT.
- Section 100(1)(a) is a broad legal protection for employees who have been designated by the employer to carry out activities in connection with preventing or reducing risks to health and safety at work and in turn, should not be dismissed for carry out these duties in a reasonable manner.

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**Unfair Dismissal, H&S Procedures:**

Mr C Sinclair  
v  
Trackwork Ltd (May 2021)



- The EAT agreed with Mr Sinclair, stating:  
*"The souring of relations, or the over-zealous manner in which the Claimant carried out his duties, are not matters which can be said to be properly separable from the carrying-out of those activities."*
- EAT went on to state that if an employee's conduct was unreasonable, or irrelevant in the context of their health and safety responsibilities, the protections provided under Section 100(1)(a) could potentially be disregarded.
- The employer could not evidence that Mr Sinclair's conduct was unreasonable or malicious and consequently, was found to have unfairly dismissed Mr Sinclair whilst he was carrying out his health and safety obligations.
- Although this case was not connected to coronavirus, it is easy to see that employees raising concerns about Covid-secure workplaces and working practices could benefit from the same protection.

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**Unfair Dismissal, H&S Procedures:**

M C Sinclair  
V  
Trackwork Ltd (May 2021)

**Considerations for Schools**

1. Ensure all legitimate H&S concerns; including those related to coronavirus; are taken seriously and responded to appropriately.
2. Staff should not be treated less favourably as a result of raising H&S concerns.
3. As restrictions potentially ease over the coming months and guidance from the Government alters, ensure all risk assessments are reviewed and updated where necessary.
4. Any updated risk assessments should also be shared with recognised trade unions.




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Nicola Coward  
Senior HR  
Business Partner

**NJC Pay Award**

**April 2021**




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**NJC Pay Award April 2021:**

February 2021 the unions lodged their pay claim for:

- A substantial increase with a minimum of 10% on all spinal column points
- Introduction of a homeworking allowance for all staff who are working from home
- A national minimum agreement on homeworking policies for all councils
- A reduction of the working week to 35 hours with no loss of pay, and a reduction to 34 hours a week in London. Part-time staff to be given a choice of a pro rata reduction, or retaining the same hours and being paid a higher percentage of FTE
- A minimum of 25 days annual leave, plus public holidays and statutory days, for all starting employees, plus an extra day holiday on all other holiday rates that depend on service
- An agreement on a best practice national programme of mental health support for all local authorities and school staff
- A joint review of job descriptions, routes for career developments and pay banding for school support staff, and completion of the outstanding work of the joint term-time only review group
- A joint review of the provisions in the Green Book for maternity / paternity / shared parental / adoption leave




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**NJC Pay Award April 2021:**

**The NJC offer:**

- With effect from 1 April 2021, an increase of 1.50 per cent on all NJC pay points 1 and above
- Completion of the outstanding work of the joint Term-Time Only review group

**The employers have also proposed that the NJC begins immediate exploratory discussions on three other elements of the claim:**

- A national minimum agreement on homeworking policies for all councils
- An agreement on a best practice national programme of mental health support for all local authorities and school staff
- A joint review of the provisions in the Green Book for maternity / paternity / shared parental / adoption leave



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**NJC Pay Award April 2021:**

**The employers reject the following:**

- Introduction of a homeworking allowance for all staff who are working from home
- A reduction of the working week to 35 hours with no loss of pay, and a reduction to 34 hours a week in London. Part-time staff to be given a choice of a pro rata reduction, or retaining the same hours and being paid a higher percentage of FTE
- A minimum of 25 days annual leave, plus public holidays and statutory days, for all starting employees, plus an extra day holiday on all other holiday rates that depend on service

The employers also reject the element of your claim that seeks, "...a joint review of job descriptions, routes for career developments and pay banding for school support staff" as these are matters entirely for local determination rather than by the NJC.



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**Paula Beck**  
HR Business Partner

**School Diversity Week**



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**Creating a Diverse and Inclusive workforce in Schools:**

We welcome and respect the fact that you are different

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If you do not change, you will not fit in here



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**Creating a Diverse and Inclusive workforce in Schools:**

Equality Act 2010

Legal right not to be discriminated against on grounds including:

- Age
- Gender
- Gender reassignment
- Sexual orientation
- Sex
- Marital status and civil partnership
- Race
- Disability
- Religion or belief
- Pregnancy and maternity



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**Creating a Diverse and Inclusive workforce in Schools:**

“

Equality is being invited into the room.  
Diversity is getting a seat at the table.  
Inclusion is sharing your view

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**Creating a Diverse and Inclusive workforce in Schools:**

**DfE School Teacher Workforce Data**

- 85.7% of all teachers in state-funded schools in England were white-British (where ethnicity is known)
- 3% of teachers were white other ethnic group
- 92.7% Headteachers were white British
- 8% of teachers came from ethnic minority backgrounds
- Only 3% of Head Teachers come from ethnic minority backgrounds
- 74% classroom teachers are women
- 66% of Head Teachers were female
- 4% Governors and Trustees from an ethnic minority background

*Please note this is not the most recent data. It is due to be updated June 2021*



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**Creating a Diverse and Inclusive workforce in Schools:**

**Benefits of a Diverse and Inclusive Workforce**

- There have been various studies which argues that a match between for example the race and ethnicity of teachers and students leads to better pupil outcomes
- Broader perspectives and cultural advantages
- Employee engagement and morale
- Can make your school more appealing to potential pupils and staff
- Attracting talent and retaining staff



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**Creating a Diverse and Inclusive workforce in Schools:**

**What you can do to create a diverse and inclusive workforce in your school?**

- Have clear policies and strategies:** PACT HR can support with template policies, procedures and your people strategy.
- Training:** PACT HR offer unconscious bias training and currently have a LGBT+ Awareness Session available for free.
- Analyse your workforce data:** PACT HR can support with your people strategy.
- Recruitment practices and processes:** Prospects Online can support you with wording your adverts.



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Sandy Watkins  
HR Business Partner

**Performance Management in Schools Post the Pandemic**



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**Performance Management in Schools Post the Pandemic:**

1. The impact to performance during national and regional lockdowns
2. Statutory compliance and trade union guidance to performance management
3. Performance planning: Post pandemic in the 2021/22 appraisal year
4. Conclusion and useful information



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**Performance Management in Schools Post the Pandemic:**

**The impact to Performance during National and Regional Lockdowns**

Factors affecting;

- A - The reviewing of 2019/20 targets
- B - The setting of 2020/21 Targets

- National and local roadmaps impacting how pupils were taught
- Impact on the curriculum and pupil progression targets such as Age Related Expectations (ARE) targets and other Pupil Performance Targets
- Pupil and staff absence impacting on the ability to achieve performance targets set



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**Performance Management in Schools Post the Pandemic:**

- Teachers must continue to adhere to the Teaching Standards Expectations 2012
- Teacher appraisals must continue in maintained schools during the coronavirus pandemic.
- Schools should "use their discretion" and "take pragmatic steps" to adapt arrangements in light of the current circumstances.
- Updated DfE guidance (*last updated May 2021*) states:  
**Teachers must not be penalised during the appraisal process or any subsequent pay progression decisions because of the decision to restrict pupil attendance at schools**



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**Performance Management in Schools Post the Pandemic:**

**Trade Union Guidance**

- The objectives set at the planning stage of the current cycle should form the basis of the review of performance at the end of it.
- However, schools have been operating in highly atypical circumstances that could not have been envisaged when objectives were set.
- Likely that teachers and school leaders will have experienced significant barriers to working towards and securing many, if not all, of their objectives in the way originally intended.
- No teacher should be disadvantaged as a result of the Covid-19 outbreak; either in terms of their ability to access pay progression or in respect of perceptions of their performance; during the course of the performance management cycle.



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**Performance Management in Schools Post the Pandemic:**

**Reviewing 2020/21 Objectives and Teachers Pay Awards**

- Some employers in the academy and free school sector used the discretion available to them in 2020/21 to set aside appraisal of teachers and school leaders against their objectives and have proceeded on the assumption that all performance management objectives have been met.



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**Performance Management in Schools Post the Pandemic:**

**Performance Planning Post Pandemic 2021/2022 Appraisal year**

- The School Teachers' Pay and Conditions Document (STCPD) states that pay progression must be linked to performance management
- PACT HR's Pay Policy has always maintained a position of an automatic progression up the pay range unless the teacher is subjected to (and aware) of a formal Performance Management Process
- Automatic pay increase approach being more prevalent given the disruption which has occurred over the past 18 months



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**Performance Management in Schools Post the Pandemic:**

**Reviewing 2020/21 Objectives and Teachers Pay Awards**

- The same will apply for non teaching/support staff in meeting their objectives
- Staff should not be penalised for not achieving their targets based on factors outside of their control.
- The same process will apply with regard application onto; and through; the Upper Pay Range (UPR), and further advice should be sought on a case by case basis from the allocated PACT HR Business Partner.



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**Performance Management in Schools Post the Pandemic:**

**Employees on support plans prior to the Pandemic**

- The partial school closures, home learning and changes to the curriculum have undoubtedly meant that any teacher being supported to improve their teaching prior or during the pandemic, especially at the "appraisal difficulties stage" or later in the performance process, will have had their support temporarily ceased through the pandemic.
- Possible from September that support can continue (or start) for the 2021/2022 Appraisal Year.
- Must have a clear understanding of why a teacher needed support and whether any of the gaps in their teaching or meeting their targets continue to be a consequence of the pandemic.



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**Performance Management in Schools Post the Pandemic:**

**Setting 2021/22 Objectives**

- Need to consider the impact the pandemic may continue to have into the coming appraisal year.
- Teachers and school leaders may need to exercise caution in setting objectives, for example if making assumptions based on pupils being on site continuously throughout the academic year.
- Targets are compliant with COVID-control measures that may be in force across the school
- ART and other pupil or school targets will need to be set with caution
- Increase emphasis of personal development targets may be required
- External barriers and physical constrains as well as support mechanisms should be referenced with the targets to capture the ever changing school environment both staff and school leaders continue to operate in going forward.



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**Performance Management in Schools Post the Pandemic:**

Specific case advice can be gained from the school's allocated PACT HR Business Partner.

Thank you



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Nicola Coward  
Senior HR  
Business Partner

**LGA Guidance on Travel Abroad**



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**LGA Guidance on Travel Abroad:**

**Government guidance (current on 21st June 2021)**

- People who travel to or through a red list country – There is a requirement to quarantine at an approved hotel on their return. The cost of which they will need to pay.
- People who travel to or through an Amber list country - There is a need to quarantine for 10 days, at home, upon their return.
- Therefore the additional 10 days should be taken into account for their leave request, ensuring that they will be available to then attend school by the start of the term.
- People who travel to a green list country – There is no need to quarantine upon return, however, people are being asked to take tests upon their return and prior to leaving the country they have been to. If these tests are positive then they will be instructed to self isolate.



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**LGA Guidance on Travel Abroad:**

- We know that international travel is likely to be affected for some time to come.
- Any staff that do travel do so knowing the requirement to quarantine upon their return.
- School leaders should give consideration to where staff are going, is there time to quarantine upon their return, before the start of term?
- It is advisable for leaders to discuss travel plans over the summer with staff, have open discussions with their staff on how best to manage this issue locally.
- If anyone tests positive following a trip abroad then the normal self isolation periods must be adhered which may impact upon the start of the school term, depending on the dates travelled.
- Where a staff members return does mean they can't return to school at the start of the school term then unpaid leave could be used unless permission has been agreed with the relevant manager in advance.



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**Early Careers Framework September 2021:**

- From September 2021, the statutory induction for new teachers will change as part of the Early Careers Framework.
- All early careers teachers in England undergoing the statutory induction will be entitled to 2 years of high quality professional development based on the framework.
- Any teachers who have started, but not yet completed induction by 1<sup>st</sup> September 2021 will need to refer to the statutory guidance for newly qualified teachers 2018.



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**New Employment Policies and last little bits:**

- We're currently negotiating with our Trade union colleagues on a new and refreshed suite of policies. These will be launched in September, in time for them to be adopted by your governing bodies or trustees.
- This has been covered multiple times now but the deadline for staff applying for settled or pre-settled status with the government is 30th June, so please ensure they have.
- Teachers pay 2021 – Applying the Public sector pay freeze is likely to cause issues. There is still a commitment for the minimum starting salary for a teacher to reach £30,000.
- DBS Online – We've sent a message out about this already so hopefully you'll be aware, that our DBS platform is undergoing an upgrade.

**Lastly...have a great summer and enjoy the break!**  
**From all of us at PACT HR**



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**Thank You!**



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