



The HR Edit

Series 1, Episode 7: Local Government pay negotiations in the South East

[Music]

0:00:05- **Helen:**

Hello and welcome to the HR edit, a podcast brought to you from South East Employers taking a look at those common and often tricky HR questions. Today, myself, Michelle, our HR guru, and Sarah, our tech wizard, are going to be looking at national pay negotiations. Sarah, can I pass over to you to kick off with the first question.

0:00:30- **Sarah:**

Michelle pay is always a majorly hot topic in local government. Can you just talk us through the different pay negotiation routes please?

0:00:35- **Michelle:**

Absolutely. So, in our region, the South East, we are quite unusual in that roughly half of our councils are not on national pay. So, we have the National Joint Committee for Local Government Services, which negotiates all of the pay, and it used to negotiate terms and conditions as well for NJC employers. Then roughly half of our councils are on local, or what we term as linked local pay. So local pay, as it sounds, is where the individual council has their own pay negotiation process that they go through in order to determine what the annual pay award will be. Linked local again has a local agreement around negotiating their annual pay award, but that agreement will contain a phrase along the lines of we will not pay less than the national award, or we will keep in mind the national award when making our recommendations for the that year's pay award. So those are the three different negotiation routes that we have in our region. As I say, we are quite unusual. Certainly some of the more Northern regions have no local pay at all. They're all on national pay.

0:01:51- **Sarah:**

Michelle, why would an organisation choose to move away from that national pay? What sort of reasons or benefits are there to actually removing yourself from that, what seems to be very well organised and it kind of does it for you kind of scheme?

0:02:05- **Michelle:**

Historically, a lot of the reason has been linked to this situation, similar to what we're facing at the moment where the national pay award has been a long and protracted negotiation process. So, the employees are having to wait months to get their pay award put into their pay packet and that has driven a lot of councils to become quite frustrated with that process. Other drivers have been where finances have been challenging for councils and actually coming out of the national negotiations has allowed them to deliver their own priorities on a local basis. So, they may have offered a reduced annual pay award but offered other benefits or incentives to the workforce as a sort of compensation for not getting the same level as the



national award. So, there are many reasons why people move out of national pay negotiations but the challenge is that you have to bring those negotiations in-house, so you have to have staff who are trained in pay negotiations. You also have to have a fairly robust recognition agreement with your unions setting out what they can and can't negotiate with you on, and your trade union representatives also need to be trained up in those negotiation processes and accredited by their union to undertake them. So, it seems quite a simple route to take to go to local pay. but there's an awful lot of work involved and it's done on an annual basis. So those people will always be involved in those kind of conversations and negotiations, unless, of course, you can get a multi-year deal. but we don't tend to see too many multi-year deals when the economy is doing what it's, you know what it does and being quite so difficult to predict what the future holds.

0:04:09- **Helen:**

So, if the national negotiations stall, what impact does that have?

0:04:14- **Michelle:**

So the impact will be different depending on whether you are local, linked local or national pay. If you are local pay, the national pay award being stalled or taking you know a protracted amount of time to resolve has no impact whatsoever. Because you are on local pay, you can determine your own pay award in your own time scales by negotiating that collective agreement with your local union reps. If you are on linked local, there is an impact. So if you have guaranteed in your pay negotiation recognition agreement that you will pay the national award as a minimum, then you do have to be mindful. However, because you are on local terms, if you chose to, you could pay what is being offered at that point in time on the national pay award as an interim award and guarantee that if the national position changes, i.e. it goes up, you will pay the additional sum that is awarded under that national award. So you can as linked local pay early based on what the position is at the national negotiations at the time. But you will have to then make those additional calculations if there is any change in the future to that final award.

0:05:48- **Sarah:**

What then if, just to throw the cat amongst the pigeons, what if the pay award is actually less and you have already paid? Will you then have to get that back if you are linked local from your employees, or has that never actually happened? Is it usually more?

0:06:03- **Michelle:**

It is normally more. But in the theoretical world where it could happen, ultimately, because you are a linked local payer and your agreement will probably state something along the lines of at a minimum we will pay the national pay award level, you will probably find it very difficult to claim back that overpaid element. Your local unions would have an absolute fit. So from an industrial relations perspective it is probably not a good move And ultimately you have kind of paid it out of your account already. Yeah, you committed haven't you.

And committed the money as well. Yeah, I mean, the knock-on effect, of course, is the year after you are already at an increased pay rate compared to the national pay scales. Of course, but if you're not using those national pay scales which a lot of linked local don't, they have



their own local pay scales then that's not so much of an issue. But there is that knock on effect that you're already at a higher level. So if the following year you match, you're paying an increased percentage on a higher amount in the first place.

0:07:23- **Sarah:**

Yes, yes, becomes inflated, doesn't it?

0:07:29 – **Michelle:**

Yeah, but, as I say, it is very rare that an award is reduced.

0:07:34- **Sarah:**

Yes, thank goodness!

0:07:37 – **Michelle:**

Once a followed final offer has been put on the table. we've only ever had it increased.

0:07:45- **Sarah:**

Do a lot of linked locals pay sooner? Because obviously the pay negotiations do go on and on and on. I actually think last year was incredibly long before anybody saw their sort of back pay in their pay packet. So is it quite a common thing for linked local to pay early?

0:08:06- **Michelle:**

Yes, I mean a number of our linked local have different effective from dates anyway, so their negotiation processes is misaligned to the national award. It often depends on how much pressure the unions are putting on. So it's a very common thing, for it often depends on how much pressure the unions are putting on locally, of course yes, I always forget about unions.

And it also kind of it also depends on how protracted they are becoming. So quite often the unions start pushing, putting pressure on two employers in October time to get it agreed by November so it can go into the pay packets in December, so that the employees are having that money before the end of the calendar year. So we do quite often get employers questioning at that point, and that goes for national pay employers as well as linked local. We quite often start getting the questions in the run up to that Christmas period Can we pay, should we pay? You know, and there are some significant risks.

0:09:17- **Sarah:**

Yes, yes, I can imagine and hopefully, you're going to tell us about those.

0:09:20- **Michelle:**

I am.

So when we're talking about the National Pay Award, the national employers completely appreciate the frustration that employers feel with the protracted negotiations. You know the national employers make every effort to consult national pay councils very, very quickly after the pay claim is received and get an offer out, you know, in a very short time-period from receipt of that pay claim. So when we end up in situations where unions are balloting for



acceptance or rejection of the award or balloting for industrial action and those ballot timeframes don't always line up, that causes those negotiations to become quite lengthy and drawn out and the national employers are as frustrated with that as any national pay employer is. And we understand why people are asking can we pay as an interim award? However, we strongly advise and when I say we, I'm talking about the national employers, the LGA and your regional employer organizations strongly advise that you don't pay early if you are a national pay employer. There are a couple of reasons for that. First of all, is the practical one the more employers that hold the line, the more pressure it puts on the unions to come to the table for the benefit of their members. Second of all, it's actually an audit issue, so council audit teams will more than likely start questioning why expense has been incurred when there is not a sort of a national collective agreement in place saying you must pay. So there is a sort of an audit issue there. Probably most compelling are the legal risks, though, and there are a couple of cases *Kostal UK Limited* and *Dunkley and INEOS Infrastructure, Grangemouth Limited vs Jones* and others. Links to both those cases are available to see members on the HR edit page of our website.

But, in summary, in both those cases the employers implemented their final pay offer before it had been accepted by the unions, and in both cases the sort of pay bargaining process had not reached its natural conclusion, it hadn't been exhausted effectively And the unions challenged it.

You know the implementation of the pay award without the collective agreement in relation to Section 145b of the Trade Union and Labour Relations Consolidation Act, which effectively prevents employers from bypassing the local collective bargaining process and making offers directly to employees in order to bring those collective bargaining processes to an end. It went back and forth through the various levels of the courts because there was some disagreement over the interpretation of bringing collective bargaining processes to an end actually meant. Was it each individual collective bargaining process or the recognition agreement effectively. But ultimately it came down to, if an employer makes an offer to directly to the employee in order to circumnavigate that particular set of bargaining, that breaches the Trade Union and Labour Relations Act and it is a prohibited act. In each of the cases *Costal* and *INEOS* the fine that was imposed was approximately £5,000 per employee that received the upfront interim payment in low of a final jointly agreed pay deal.

0:13:41- **Sarah:**

Wow, so yeah, that's serious.

0:13:44- **Michelle:**

It's very, very expensive and when you think about you would be doing that to your entire workforce that is, on Green Book Pay. That very quickly mounts up to a lot of money. So there are some significant legal risks associated with making those early interim payments before the national pay negotiation process is concluded. We fully appreciate that you will be getting an awful lot of pressure from the unions, your workforce and you know probably your members as well, your councillors, But, as I say, there are significant costly risks associated with doing so if you are a national pay employer.



0:14:36- **Sarah:**

I think if people understood as well you know the financial risk to the organisation for making an early payment, I think maybe they'd back off a little bit, because I hadn't appreciated that at all. And, like everybody, get frustrated when the pay deals become or the negotiations become so protracted that you're getting towards Christmas when you really could do with, you know, a bit of extra in your pay packet. Although I have to say that when it does go in and you've got a few months-worth, it's actually quite nice, isn't it? Especially before Christmas. But I hadn't appreciated that the kind of fines that you could receive for going early on your payments I mean £5,000 per employee is a significant amount when you think about I don't know this is off the top of my head because I've been doing a bit about headcount, but you know councils have sort of 250, you know in some cases 500 employees, so that is significant and can probably destroy an organisation.

0:15:27- **Michelle:**

Yes, Yeah, and you know, it's not just the financial implications, it's the reputational risk. I mean, you know we are talking about those who are union members, because it's about circumnavigating that trade union relationship. But yeah, I mean, it's one of those challenges that we face more and more often now, particularly with the local government services, pay negotiations. But yeah, it's something that we are just going to have to learn to live with, I'm afraid.

0:16:01- **Helen:**

So, trade union seems to be the sort of backbone for employment and labour relations in this country.

0:16:08- **Michelle:**

Yeah, it is important to have that union recognition and that sort of protection for employees. I mean, you think about some of the horror stories that come out of the private sector where they are not unionised and their working conditions are horrendous. You know, minimum pay, not exactly the safest environments to work in, you know all that kind of stuff. And I recognise that is the minority of private sector employers. But just the fact that that kind of work ethic and workplace exists really brings to the fore why unions are there and the positive impact that they can have on, you know, an employee's working life.

0:16:58- **Helen:**

Thank you so much for that, Michelle. The latest news on national pay will be on our website, <https://www.seemp.co.uk/free-resources/latest-on-pay>, and you can find the links mentioned in this podcast on our website, on our podcast page, www.seemp.co.uk/theHRedit, where you'll also find all the supporting documents for our previous episodes. We hope to see you back next time when we will be discussing our next HR topic. Thank you very much and we'll see you then.

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