



## Section 4 – Hours of Work and Annual Leave

Author	Human Resources
Next Review Date	January 2017

Change History			
Version	Review Date	Reviewed By	Description
	29/1/16	Rachel Mellor	Reference to dates of committee minutes removed

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## CURRENT POLICIES ON LEAVE OF ABSENCE (ALL EMPLOYEES)

TYPE OF REQUEST	CURRENT POLICY													
Unpaid Leave of Absence	<p>Decisions regarding the granting of unpaid leave of absence within Service areas are the responsibility of Chief Officers. The duration of the period of unpaid leave of absence is entirely at the discretion of the Chief Officer, and is dependant upon the nature and merits of the request / and/or upon the demands of the Service.</p> <p>Employees should make use of their annual leave entitlements, and flexible working hours provision as appropriate, before making requests for unpaid leave of absence.</p>													
Parental Leave (unpaid leave)	Chief Officers able to grant up to 6 weeks unpaid leave in a calendar year for reasons of parental care of a child or matters concerned with dependants. (See separate guidance issued on Parental Care Leave and Time Off for Dependants.)													
Bereavements (paid leave)	<table><tr><td>Immediate Parents</td><td>)</td><td rowspan="6">Maximum 3 days except in exceptional circumstances where individual cases will be treated on merit</td></tr><tr><td>Husband/Wife/Partner</td><td>)</td></tr><tr><td>Children</td><td>)</td></tr><tr><td>Any other persons deemed appropriate by the Chief Officer</td><td>)</td></tr><tr><td></td><td>)</td></tr><tr><td></td><td>)</td></tr></table>	Immediate Parents	)	Maximum 3 days except in exceptional circumstances where individual cases will be treated on merit	Husband/Wife/Partner	)	Children	)	Any other persons deemed appropriate by the Chief Officer	)		)		)
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Husband/Wife/Partner	)													
Children	)													
Any other persons deemed appropriate by the Chief Officer	)													
	)													
	)													
Funerals (paid leave)	<table><tr><td>Husband/Wife/Partner</td><td>)</td><td rowspan="6">One day</td></tr><tr><td>Son/Daughter</td><td>)</td></tr><tr><td>Parents</td><td>)</td></tr><tr><td>Parents-in-law</td><td>)</td></tr><tr><td>Brothers/Sisters</td><td>)</td></tr><tr><td>Grandparents</td><td>)</td></tr></table>	Husband/Wife/Partner	)	One day	Son/Daughter	)	Parents	)	Parents-in-law	)	Brothers/Sisters	)	Grandparents	)
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Son/Daughter	)													
Parents	)													
Parents-in-law	)													
Brothers/Sisters	)													
Grandparents	)													
Blood Donors (paid leave)	Paid leave of absence.													
Civic Duties (paid leave)	If Mayor/Mayoress/Consort or Deputy Mayoress/Consort are employees – granted paid time off.													

<b>TYPE OF REQUEST</b>	<b><u>CURRENT POLICY</u></b>
<b>Compensatory Leave of Absence (Attendance at Council or Committee meetings)</b>	<p>In the event of employees having to attend Council or Committee meetings outside normal working hours, the following provisions will apply:-</p> <p>Employees paid above Scale 6 equivalent time off in lieu.</p> <p>Employees paid on or below Scale 6 – equivalent time off in lieu or overtime pay as applicable.</p>
<b>Election Duties (paid leave)</b>	<p>Staff, who assist at elections as Presiding Officers, Poll Clerks and Counting Clerks, within the administrative area of this Authority – leave of absence with pay from their normal duties.</p> <p>Chief Officer approval is required for staff who wish to assist at elections outside the administrative area of Calderdale Council, evidence of attendance is required.</p>
<b><u>Governing Body (Member of) (All Employees)</u> (paid leave)</b>	Reasonable time off arrangements with pay.
<b>HM Non Regular Forces (Service in) (All Employees)</b>	<p>Employees whose basic leave entitlement is 26 days – 2 weeks' paid leave of absence.</p> <p>Employees with more than 26 days leave either one or 2 weeks paid leave at the Council's discretion. Employees required to undertake training additional to summer camp who are unable to arrange for such training on days when they would not normally be working – paid leave of absence recommended (maximum of 16 days per annum) by National Agreement.</p> <p>Procedure for Employees who are Volunteer Reservists – Territorial Army Members – see separate guidance issued in this section.</p>
<b>Jury Service (All Employees) (paid leave)</b>	Paid leave of absence. Employee to claim Juror's allowance. Such amount received to be deducted from pay.
<b><u>Candidates for Municipal Elections (All Employees)</u> (unpaid leave)</b>	Prospective candidates granted unpaid leave of absence for the day of poll only.

<b>TYPE OF REQUEST</b>	<b><u>CURRENT POLICY</u></b>
<b><u>Examinations (paid leave)</u></b>	A maximum of one day's paid leave on the day of the examination, dependent upon the time and location of the examination.
<b><u>Examinations – Final Revision (paid leave)</u></b>	For each half day of examination – half day's paid leave. (Training – Development Policy).
<b><u>Correspondence Courses/ Distance Learning Arrangements (paid leave)</u></b>	In accordance with the Council's Training and Development Policy, paid half (½) day per week during term (semester) time only for the duration of the course.
<b><u>Extension of Sick Leave (unpaid)</u></b>	Services should be prompt in making referrals to Occupational Health when reaching the 'trigger points' outlined in the Council's Attendance Management Policy - if prompt referrals are made this should keep to a minimum the number of employees who enter into a 'no pay' situation. Unpaid sick leave should not continue indefinitely; Chief Officers should follow the Council's Attendance Management Policy in terms of resolving issues.
<b><u>Special Leave (paid leave)</u></b>	With pay in special circumstances at the discretion of the Corporate Lead for HR.
<b><u>Retained Fire Fighters (paid leave)</u></b>	Paid leave of absence – Council to deduct Retained Fire Fighters allowance. For the minimum leave allowance, we give 2 weeks' paid leave of absence.
<b><u>Local Authority (Member of) (All Employees) (paid leave)</u></b>	Paid leave for up to 28 days per municipal year, subject to individual assessment where leave appears to be insufficient.
<b><u>A Member of a Water Authority (paid leave)</u></b>	Paid leave of absence. Council to deduct any allowance received.
<b><u>Health Service Trusts (paid leave)</u></b>	Paid leave of absence. Council to deduct any allowance received.
<b><u>Magistrates (paid leave)</u></b>	Employees appointed as Magistrates – up to 26 occasions paid leave.

## **TYPE OF REQUEST**

## **CURRENT POLICY**

### **A Justice of the Peace (paid leave)**

Paid leave of absence. Council to deduct any allowance received.

### **Special Constables (paid leave)**

Paid leave of absence. Council to deduct allowances received.

### **As a Witness in a Criminal/Civil/Tribunal Hearing (which involves the Council)**

Paid leave of absence taking account of individual circumstances and the merits of the case in question. Council to deduct any allowance received.

### **Statutory Tribunals (paid leave)**

Paid leave of absence. Council to deduct any allowance received.

### **Trade Union Courses/ Seminars/Conferences**

At the Chief Officers' discretion; with pay.  
Refer to separate guidance issued in respect of Facilities, Trade Union Agreement.

### **Attendance/Observance of Religious Festivals**

Requests for leave of absence/time off for employees who want to attend/observe religious festivals should be considered sympathetically and be accommodated wherever this is possible within the exigencies of the service.

Employees should provide their manager with as much notice as possible when requesting leave of absence/time off.

As some religious/belief festivals are aligned with lunar cycles, dates can change from year to year, therefore the dates for some festivals do not become clear until quite close to the actual day.

Discussion and flexibility between managers and staff is essential to reach a mutually acceptable compromise.

Any approved leave of absence for employees who want to attend/observe religious festivals is without pay if existing Council leave provisions/working arrangements are not used.

### **Local Government Employment Interviews (paid leave)**

Paid leave of absence.

# **CALDERDALE COUNCIL**

## **JOB SHARING GUIDELINES**

### **1. WHAT IS JOB SHARING?**

Job sharing is normally the division of a full-time job into two part-time jobs with the sharers being equally responsible in the full-time post.

### **2. WHAT KIND OF JOBS CAN BE JOB SHARED?**

All jobs within the Authority should be considered suitable for job sharing unless the Chief Officer specifies otherwise. The decision as to whether a particular post is suitable for job sharing will be dependent on:-

- (a) the operational requirements of the Section/Service in which the particular post is located;
- (b) whether it is feasible to split the duties of the post without affecting efficiency.

### **3. HOW CAN JOB SHARING BE INTRODUCED?**

An arrangement to job share may be introduced by:-

- (a) existing and potential employees applying for posts which have been advertised suitable for job sharing;
- (b) existing full-time employees formally applying to their Chief Officer for a job share arrangement to be agreed in respect of his/her own job;
- (c) a joint application can be made by existing and potential employees where their individual jobs and/or mutual skills and experience are suitable for the proposed job share position.

### **4. ADVERTISING**

4.1 As a general principle all vacancies will be advertised as suitable for job share arrangements.

4.2 Where the job sharing arrangement has arisen on the initiative of existing employees and a joint application is made to job share one of the posts for which they are currently employed, this will not be advertised and the consequential vacancy will be advertised. This is provided that:-

- (a) both applicants are considered suitable to job share and meet the essential criteria of the post; and

- (b) both the posts in question are on the same grade and the job share arrangement would not result in one of the job share applicants receiving direct promotion.

- 4.3 If the job sharing arrangement would result in one of the job share applicants being given direct promotion, the joint application should be subject to open recruitment. The remaining part of the potential job share post should then be advertised in order that all interested parties may apply.

## **5. SELECTION PROCEDURE**

- 5.1 The shortlisting and selection of job share applicants will be carried out in accordance with the agreed procedures set out in the Recruitment and Selection Code of Practice.

- 5.2 The Service will be responsible for the selection process to ensure that the skills and experience of prospective job sharers relate both to each other and to the full requirements of the job concerned.

- 5.3 At the interview stage each shortlisted candidate should be interviewed separately in the normal way.

- 5.4 Where communication and mutual co-operation between job sharers is considered important, the Service may, as well as interviewing job sharing candidates individually see the candidates together in order to assess the way they will jointly fulfil the demands of the post.

- 5.5 When a full-time post is vacant and is advertised as being suitable for job sharing, consideration will be given to both full-time and job sharing applicants. It will be the responsibility of the Service to ensure that the combined qualities of the proposed job share partnership are given equal consideration to those offered by full-time candidates.

- 5.6 In determining the suitability of a job share partnership, the Service must also be satisfied that the proposed pattern of working meets both the job and the job sharer themselves. Should this not be the case and say, for example, one of the job sharers can only work one of the working arrangement options and this does not match any preferred by the other job share applicant, then this will affect their suitability to be appointed as one half of the partnership. However, management should pursue the various working arrangement options with job share applicants in an effort to encourage a job share appointment wherever possible.

### **5.7 Existing Postholders**

- 5.7.1 Where part of a job sharing post becomes vacant the remaining half of the job will initially be offered to the remaining sharer still in post on a full-time basis.

- 5.7.2 If the remaining sharer does not wish to take a full-time position the job will then be advertised in accordance with normal procedure as a job sharing position. There



will be no onus placed on the remaining sharer to find a replacement, this will be the responsibility of the Service.

- 5.7.3 In the event of Management being unable to fill the remaining hours after two successive recruitment drives, the job will be reviewed and **may** at management's discretion depending on the particular circumstances have to be advertised on a full-time basis. This can only be done when the remaining job sharer has been redeployed to a suitable vacancy after consultation with the Corporate Lead for HR and the appropriate Trade Union. It is important that this proviso is brought to the attention of all applicants for job sharing positions and potential job sharers prior to any appointments or commitments being made.

## 5.8 **Shortlisting - Procedure**

### 5.8.1 **Single Applications**

Single applicants can be considered if the applicant meets the essential criteria of the post; the Service will then have to consider arrangements to fill the other part of the post - the original applicant will need to be advised that any appointment offer made may be dependent upon the Service's success in attracting another suitable job share candidate for the post.

### 5.8.2 **Joint/Linked Applications**

If at shortlisting stage one half of a joint/linked application is rejected, the successful half should be given the option of continuing to the interview stage as a single applicant who may be offered a job share partnership with another unlinked applicant.

### 5.8.3 **Interview Procedure**

If one half of a joint/linked application proves unsuitable at the interview stage they should be rejected. If an unlinked applicant is considered particularly suitable for the position he/she has applied for, the Service may wish to consider appointing the applicant and advertising the subsequent job sharing position again. If an appointment is made on this basis the applicant should be made fully aware of what will happen if it is not possible to recruit a job share partner. (See paragraph 5.7.3). This assumes that the selectors are unable to offer the successful half of a partnership with another successful job share applicant from the interview session.

## 6. **SPLITTING OF JOB SHARING POSTS**

- 6.1 Job sharing posts will generally, but not always necessarily, be split into half-time posts, ie 18½ hours per week; and similarly it may be possible for teaching vacancies.
- 6.2 The hours for job sharing posts do not need to be allocated on an equal basis. The total hours of the job sharers will not exceed that of a full-time post. In the case of job sharers where the full-time hours are less than 37 hours per week, two posts into three could be considered. The pattern of the working week for job sharers will

be determined by the Service in consultation with individual job sharers. The Service should be satisfied that any proposed pattern of working meets both the demands of the job and job sharers themselves.

6.3 There are no hard and fast rules regarding working patterns for job sharers; however, the examples below are the most commonly used:-

- (i) on a split day basis, one sharer working in the morning and the other sharer working in the afternoon;
- (ii) on a weekly basis - job sharers working 2½ days each;
- (iii) 3 short days per week for each sharer;
- (iv) on an alternating one day on/one day off basis;
- (v) on a one week on/one week off basis.

6.4 Full-time employees seeking job sharing arrangements are advised to seek advice from the Pension Fund as regards the effect of part-time working on their pension rights. If you work part-time, pension calculations are slightly different.

## **7. REVIEW OF JOB SHARE**

Job sharers should be aware that such arrangements may have to be reviewed in order to ensure that the service does not suffer. In the event of the service suffering and there is a need to revert the post back to a full-time position, the job sharers should be redeployed to another vacancy of a similar nature. (Any redeployment will be considered on an authority-wide basis).

This will only be done in extreme circumstances where there is no alternative. Again, this proviso needs to be brought to the attention of all applicants for job sharing positions and potential job sharers prior to any appointments and commitments being made.

Any review of a job sharing arrangement should be done in conjunction with the individual and his/her Trade Union.

## **8. RIGHT OF APPEAL**

If an employee is aggrieved with any matter under this scheme he/she may pursue this through the grievance procedure.

## **9. EMPLOYMENT RIGHTS**

Job sharers enjoy the same employment rights as other employees in respect of continuity of employment and employment protection.

## **Letter of Appointment/Contract**

Each partner to a job share will hold an individual contract of employment.

The postholder's job share title will be that given to the full-time job with the endorsement - ('Job Share').

The job description issued will be that prepared for the full-time job with an addendum to reflect agreements reached where overlap/continuity and/or split tasks are required.

The hours to be worked will be individually stated for each partner to the job share. Total hours will not exceed the assigned full-time post.

A copy of the job sharing guidelines should be issued to each job share partner. Special attention should be drawn to paragraphs 5.7.3 and 7 of the guidelines.

## **10. CONDITIONS OF SERVICE**

National and Local Conditions of Service applicable to full-time posts shall apply as appropriate to job sharers subject to the following:-

- 10.1 **Entitlement** for which employees qualify by length of service (eg annual leave etc) shall be calculated individually. The entitlements accrued will be applied on a proportionate basis, based on the hours worked.

10.2 **Payment and Increments**

Job sharers will attract the appropriate amount of pay for the hours worked and incremental progression will occur as appropriate.

10.3 **Sickness Entitlement**

Job sharers will be eligible for statutory sick pay/occupational sick pay as appropriate depending upon the amount of remuneration received and their length of service.

10.4 **Annual Leave/Statutory Holidays**

Job sharers will receive the standard leave provisions pro rata to average contractual hours.

Statutory/bank holidays will be shared by both job sharers. There may be a need during these periods for managers, in conjunction with the job sharers, to review detailed working arrangements.

10.5 **Maternity Support Leave**

Job sharers will be entitled to maternity support leave if they qualify in accordance with National Conditions of Service.

(For further information on entitlement to maternity leave please obtain a Pregnancy Information Pack from your Service Administrative Officer).

10.6 **Bereavement Leave**

Job sharers will be entitled to bereavement leave pro rata to average contractual hours.

10.7 **Additional Hours/Overtime**

Where a job sharer works extra hours which cannot be offset by time off in lieu the job sharer will be paid plain time rates for extra hours worked up to 37 hours. Thereafter normal overtime rates will apply.

10.8 **Working Arrangements other than Normal Hours**

When hours are worked which vary from 'normal' working hours, then national Conditions of Service provisions will apply where Job Sharers are entitled to allowances for shift working, weekend working etc.

10.9 **Flexible Working Hours**

Where a system of flexible working hours is in operation job sharers will at the discretion of the Chief Officer be allowed to participate on the scheme in accordance with the flexible working hours guidelines.

10.10 **Travelling**

Travelling expenses in accordance with National and Local Conditions of Service will be paid to job sharers when incurred in the performance of their duties.

10.11 **Essential User Car Allowance**

For part-timers, term time workers or job sharers the Council's 1500 miles per annum criterion will apply on a pro rata basis.

10.12 **Period of Notice to Terminate Employment**

Refer to page 21 of this Section (Termination of Appointments).

10.13 **Pension**

Job sharers can join the Local Government Pension Scheme. Teachers working less than 27½ hours per week can be included in the Teachers' Superannuation Scheme under its 'Part-Time Regulations'.

#### 10.14 **Training**

Post entry training will be allowed under the same conditions as full-time workers.

Fees, travelling and subsistence to attend college will be paid on the same basis as those paid to full-time employees.

Requests for training and day release facilities by job sharers will be considered on an individual basis on the merits of each case as in the case will full-time employees.

## **PART TIMERS AND JOB SHARERS WORKING ARRANGEMENTS**

### **1. Job Sharers**

Terms and conditions of service are pro-rata to the hours of work. This applies to Sickness, Bank Holidays, Annual Holidays, Christmas Closedown, Leave of Absence etc. Pay and remuneration will always be the same, based on contractual hours of work. Cover should be arranged and organised as follows:-

- (a) Annual leave by both parties at the same time should be avoided.
- (b) When more than one Bank Holiday occurs within a working week, it should be possible for each member of staff to have the days off whilst retaining cover in the office.
- (c) Leave periods - suggested pattern:-

	<u>Partner 1</u>	<u>Partner 2</u>
Bank Holiday occurring on:	Working Monday, Tuesday and Wednesday am	Working Wednesday pm, Thursday and Friday
Monday	Will work Tuesday and Wednesday full days	Will work Thursday and Friday only
Tuesday	Will work Monday and Wednesday in full	Will work Thursday and Friday in full
Wednesday	Will work Monday and Tuesday in full	Will work Thursday and Friday in full
Thursday	Will work Monday and Tuesday in full	Will work Wednesday and Friday in full
Friday	Will work Monday and Tuesday in full	Will work Wednesday and Thursday in full

The above principle applies to one changeover per week. This example has two partners working 18½ hours per week. The same rule applies irrespective of the hours worked.

- (f) For recording flexitime, the total hours over the 4-week period is 74 hours, 18½ hours per week. All categories of absence are pro-rata on this basis. Hours not being worked should be blocked out.

## **HOLIDAY ENTITLEMENTS**

### **Statutory and General National Holidays and Extra Statutory Holidays (Officers, Manual Workers and Craftsmen)**

Calderdale has 8 statutory holidays, these are as follows:-

**Good Friday**

**Easter Monday**

**May Day**

**Spring Bank Holiday Monday**

**August Bank Holiday**

**8 in total**

**Christmas Day**

**Boxing Day**

**New Year's Day**

### **Part-Time Employees Entitlement to Statutory and Bank Holidays**

Part-time entitlement to statutory and local holiday entitlement is calculated pro-rata to 37 hours as is the case of job sharers.

**Single Status Agreement  
22 March 1999**

### **Annual Leave**

<b>Grade</b>	<b>2009/10 Leave Year</b>	<b>From 1 April 2010 and thereafter</b>
Scale 1-4	24 days	26 days
Scale 5-6	26 days	28 days
Scale SO1 and above	28 days	30 days
All staff are entitled to an additional 5 days annual leave on completion of 5 years continuous local government service.		

## **BUYING ANNUAL LEAVE POLICY**

### **1. Buying Additional Annual Leave**

- 1.1 Employees must have completed their probationary period with the Council to take part in this scheme.
- 1.2 An employee can choose to buy up to 5 days annual leave per year (pro rata for part time staff). The minimum purchase is one full day for full time employees (pro rata for part timers).
- 1.3 You can only buy annual leave once in any full leave year and this must be agreed by your Line Manager.
- 1.4 The calculation will be based on your hourly rate at the time your request is approved and the costs will be recovered equally across the remainder of your leave year.

#### **Example**

Your annual leave year runs from the 1<sup>st</sup> April.

You apply in June to buy an additional week's annual leave and this is approved, therefore the calculation is as follows:

£14.00 (hourly rate) x 37 (hours wanting to buy) divided by \*9 (months left in leave year) = 9 monthly deductions of £57.55.

Please Note: Payroll deductions will start depending on when the application is made and how this coincides with payroll cut off dates.

- 1.5 This policy does not form part of any employee's contract of employment and it may be amended by the Council at any time following consultation with recognised Trade Unions.

This policy does not apply to employees who are subject to Teachers' Pay and Conditions document.



## **BANKING ANNUAL LEAVE POLICY**

### **1. Banking Annual Leave**

- 1.1 Employees must have completed their probationary period with the Council to take part in the banking of annual leave scheme.
- 1.2 All staff must take a minimum of 20 days annual leave plus 8 bank holidays per holiday year. Employees will not be able to bank any day's leave which would reduce their total leave entitlement to below the statutory annual entitlement, i.e. for those staff on the basic entitlement of 26 days the maximum they will be allowed to bank is 5 days in any leave year.
- 1.3 An employee may choose to bank up to 5 days annual leave per year (pro rata for part time staff). The minimum bank is one full day for full time employees (pro rata for part timers).
- 1.4 Managers should verify an employee's annual leave entitlement prior to approval of any application.
- 1.5 An employee may bank a maximum of 25 days ie 5 days per year for a maximum of 5 years.
- 1.6 Applications to bank leave should be made within the last 3 months of your normal leave year.

#### **Example**

Your new annual leave year starts from the 1st April; you can to apply to bank annual leave from 1<sup>st</sup> January up to 31<sup>st</sup> March for your current leave year.

- 1. There is no option to receive monies in lieu of banked leave unless authorisation is given by HR in exceptional circumstances.
- 2. You should apply as early as possible to your Director when requesting to take banked leave; but in any event giving at least twice the notice period as time off you are requesting.

### **2. Requests**

- 2.1 All requests must be made in writing to the Manager/Director of the Service. The needs of the service must be a priority and it is the Manager's'/Director's decision whether to support or decline an employee's request. Employees may appeal in writing to the Corporate Lead for HR if they wish to pursue a request that has been declined. The appeal decision of the Corporate Lead for HR is final and no further appeal will be allowed under this policy.

### **3. Status**

- 3.1 This policy does not form part of any employee's contract of employment and it may be amended by the Council at any time following consultation with recognised Trade Unions.

This policy does not apply to employees who are subject to Teachers' Pay and Conditions document.

## **SINGLE STATUS AGREEMENT**

### **Overtime**

All overtime worked between Monday and Friday to be paid at time and four tenths (where the postholder is up to and including SCP28). Overtime above SCP28 is paid at plain time where it is not possible/difficult for the postholder to be given time off in lieu.

### **Unsocial Hours Payments**

These payments are now deleted - plain time instead of time and a fifth.

### **Bank Holiday Working**

Under the terms of the Single Status Agreement employees paid up to and including SCP28 required to work on a public and extra statutory holiday shall, in addition to the normal pay for the day be paid at plain time rate for all hours worked within their normal working hours for that day. In addition, at a later date, time off with pay shall be allocated as follows:-

- Time worked less than half the normal working hours on that day - Half Day
  - Time worked more than half the normal working hours on that day - Full Day
- \* Please note that the previous minimum payment of 4 hours for ex-manual workers will no longer apply.
- \* Please note the different arrangements for employees (former officers) working in Social Services residential accommodation.

### **Statutory and Bank Holidays**

Part-time employees will have applied to their pay and conditions of service pro-rata to comparable full-time employees.

## **FLEXIBLE WORKING HOURS (FWH)**

### **Guidelines for Employees**

These guidelines outline the general rules and regulations relating to the operation of the Working Hours Policy and flexible working hours. It is not possible within this booklet to cover every eventuality and if a problem arises which is not answered here please ask your Section Head/Supervisor for advice.

This policy does not form part of any employee's contract of employment and it may be amended by the Council at any time following consultation with recognised Trade Unions.

#### **1. What are Flexible Working Hours?**

- 1.1 Flexible Working Hours (FWH) are based on the principle that employees are able, to a certain extent, to choose the times they start and finish work, subject to the limitation that the work of the Service must not suffer as a result of employee flexibility.

#### **2. Who can Participate in the Scheme?**

- 2.1 The FWH Scheme was introduced on an Authority-wide basis with effect from 11 April 1988.
- 2.2 The Scheme is voluntary and is open to both full and part-time employees.
- 2.3 Employees will have the option to participate in FWH. If any employee wishes to stop working FWH he/she may do so at the end of an accounting period, subject to Section Head/Supervisor approval.
- 2.4 Chief Officers have the discretion to exclude employees from participating on the Scheme, where individual conditions of employment or operation requirements make it impossible for the employee to work flexible hours.

#### **3. Right of Appeal**

- 3.1 Employees who are excluded from the Scheme have a right of appeal through the grievance procedure.

#### **4. Working Arrangements**

- 4.1 It is essential that all sections are adequately staffed during 'normal hours' ie 0845 - 1730 hours Monday to Thursday; 0845 - 1700 hours on Friday. Section Heads/Supervisors will be responsible for ensuring reasonable working arrangements which will allow for the smooth operation of the Sections' activities and a satisfactory service to the public at all times. Please note that these arrangements supplement and incorporate office opening hours for the public 0900 – 1700 hours.
- 4.2 Within these constraints the wishes of individual employees should be taken into account wherever possible and employees should be encouraged to arrange adequate cover amongst themselves, management intervening only if difficulties arise.

## **The Scheme will operate as follows:**

### **5. Bandwidth**

- 5.1 The bandwidth of 0700 to 1900 hours represents the earliest time work can commence and the latest time work can finish. Only time worked during the bandwidth will be credited.

### **6. Part-Time Employees**

- 6.1 Part time employees contracted to work less than 37 hours per week or employees working unusual hours may be included in the Scheme, but it may be necessary for Section Heads/Supervisors to change the bandwidth times for those particular employees.
- 6.2 Part time employees will have the provisions of the flexible scheme applied on a pro rata basis.

### **7. Flexible Hours**

- 7.1 These are the times within the bandwidth when an employee may vary his/her starting and finishing times provided the other conditions of the Scheme are satisfied and the needs of the service are catered for. Flexible hours are 0700– 1900 hours.
- 7.2 Please note that Directors may introduce arrangements within the limits detailed in 7.1 above dependent upon the nature and location of the services they provide. You will need to give due regard to the necessity to have adequately staffed services during the working day, particularly during main public access/contact and other times of service demand etc.
- 7.3 You may need to consider the effects that support service assistance/facilities may have on your ability to fully operate the 0700-1900 hours bandwidth in all/parts of your Directorate, **and** to ensure that the buildings that your staff occupy are accessible to them during the extended bandwidth period.

**Note:** The Introduction of Smarter Working and reducing premises costs should also be considered and many staff will have the ability to work smarter in a variety of locations not just the building that they occupy.

### **8. Lunch Break**

- 8.1 Lunch must be taken no more than six hours from the employees start time ie if an employee starts at 9.00am, a lunch break must be taken by 3.00pm. The minimum lunch break is 30 minutes. This also applies to part-time employees who work more than 6 hours per day.

### **9. Standard Time**

- 9.1 The number of hours which an employee is contracted to work ie full-time is 148 hours per 4 weeks, 37 hours per week or 7 hours 24 minutes per day and half a day will be calculated at 3 hours 42 minutes.

## **10. Accounting Period**

- 10.1 The number of weeks in a flexi-cycle (ie 4 weeks) at the end of which, the total hours worked during the cycle must be calculated to give the debit/credit hours owed. Debit and credit hours accrued must be within the stipulated limits specified in the following paragraphs, pro rata for part-time employees.

## **11. Credit Hours**

- 11.1 A maximum of one and a half days may be taken as flexi-leave in any accounting period. Employees are allowed to carry over a maximum of 11 hours 06 minutes credit time into the next accounting period.

## **12. Debit Hours**

- 12.1 The number of hours worked in the accounting period less than standard time. Up to 7 hours 24 minutes debit time may be accrued in any accounting period. Abuse of the Scheme may lead to removal from the Scheme and possible disciplinary action.
- 12.2 Any excess time above 7 hours 24 minutes will be substituted for annual leave or deducted from salary after consultation with individual employees.

## **13. Flexi-Leave**

- 13.1 Flexi-leave can be taken in blocks of not less than half a day. Only one and a half days or equivalent (ie 3 half days) flexi-leave may be taken in any accounting period providing that:-
- 13.1.1 The work of the service does not suffer as a result of the staff absence. (In the event of staff being unable to take accrued flexi-time due to pressure of work/staff shortage etc, management will have the discretion to allow individuals to carry forward more than 11 hours 06 minutes into the next accounting period. This should only be used in very exceptional circumstances and individuals should not be allowed to accrue excessive amounts of flexi-time).
- 13.1.2 The absence has been approved by the Section Head/Supervisor.
- 13.1.3 It is not necessary to accrue credit hours before taking flexi-leave.

## **14. Time Worked Outside the Bandwidth**

- 14.1 Time worked at the workplace outside the bandwidth (ie 0700 to 1900 hours) at the request of management is not strictly part of the Flexi-time Scheme.
- 14.2 Time taken off in lieu to compensate for time worked outside the bandwidth will be credited eg an employee who works 4 hours outside the bandwidth will be credited 4 hours at a later time providing prior authorisation has been sought from Section Head/Supervisor.

14.3 Overtime payments will continue to be made in accordance with the NJC for Local Government Services.

14.4 Overtime work must be approved in advance by the Section Head/Supervisor.

## **15. Credit Adjustment**

15.1 For the purpose of credit adjustment, this will be in accordance with contractual hours, eg for full-time working Monday-Friday 37 hours, one standard working day will be calculated as 7 hours 24 minutes and a half day will be 3 hours 42 minutes.

15.2 Time will be credited for absence from work under the following circumstances:-

- (i) Annual Leave
- (ii) Statutory Holidays
- (iii) Day Release
- (iv) Special Leave ie blood donors etc
- (v) Sickness
- (vi) Hospital Appointment
- (vii) Ante-natal Clinic
- (viii) Optician regarding eye tests for VDU operators
- (ix) Clinic regarding smear tests
- (x) Bereavement Leave
- (xi) Lieu Time
- (xii) Excess Travelling Time

## **15.3 Annual Leave**

15.3.1 Time credited for annual leave will be in accordance with contractual hours, eg for full-time working Monday-Friday 37 hours, 3 hours 42 minutes for half a day absence and 7 hours 24 minutes for a full day's absence.

## **15.4 Sickness**

15.4.1 Absence because of sickness will be credited in accordance with contractual hours, eg for full-time working Monday-Friday 37 hours, 7 hours 24 minutes for each full day's sickness. Where an employee becomes ill part way through the morning and goes home he/she will be credited in accordance with contractual hours. In the event of the employee going home ill during the afternoon the credit accrued for the morning will stand and he/she will be credited for the afternoon up to a standard half day in accordance with contractual hours.

## **15.5 Day Release**

15.5.1 Absences due to day release will in principle be credited with 3 hours 42 minutes for each half day's absence (7 hours 24 minutes for a whole day release). When day release is taken for part only of a morning or afternoon, then credit allowed for that half day shall be equivalent to the time actually worked or 3 hours 42 minutes whichever is the greater. Employees working different working patterns will need to discuss arrangements with their Manager.

- 15.5.2 Employees who have to leave work earlier than they would do normally to attend Council sponsored evening classes will have their afternoon hours credited in accordance with their contractual hours.

## **15.6 Medical Visits**

- 15.6.1 Medical appointments ie dentist, doctor, optician etc excluding hospital visits should wherever possible be arranged during flexible non-work time. However, absences during working hours which have the prior approval of the appropriate Section Head/Supervisor will be allowed, although the time absent from work will be deducted from the daily total.
- 15.6.2 In exceptional circumstances of an unplanned medical emergency, reasonable time off with pay be given on that occasion.

## **15.7 Hospital Visits**

- 15.7.1 Absence due to hospital visits will be credited in accordance with contractual hours eg for full-time 37 hours, 3 hours 42 minutes for each half day's absence (7 hours 24 minutes for a whole day's absence).
- 15.7.2 Where the hospital visit is for part only of a morning or afternoon then employees will be credited for the hours worked plus the duration of the hospital visit.
- 15.7.3 When the hospital appointment is in the morning employees should whenever possible come into work beforehand. Where this is not practical Section Heads/Supervisors will have the discretion to determine from what time it is reasonable to credit hours. Time will normally be credited from 0845 hours for 37 hour employee.
- 15.7.4 When the hospital visit is in the afternoon and the employee returns to work he/she will be credited for the duration of the hospital visit. If the employee does not return to work he/she will be credited 3 hours 42 minutes.
- 15.7.5 Section Heads/Supervisors should take into consideration the location of the hospital and the employee's place of residence before deciding when to credit hours from.

## **15.8 Excess Travelling Time**

- 15.8.1 Time spent on excess travel during the bandwidth (ie 0700 – 1900 hours) may be claimed as working hours as long as prior authorisation is sought from the Section Head/Supervisor.

## **17. Termination of Employment**

- 17.1 An employee who is working during a period of notice to terminate his or her employment must erase any debit hours by the end of the employment, otherwise debit hours will be deducted from any outstanding annual leave or salary/wage, after appropriate consultation with the individual.

## **18. Recording and Monitoring of Hours Worked**

- 18.1 The recording of hours worked will be the responsibility of each employee.



- 18.2 Each employee participating in the scheme will be required to maintain an individual record of hours worked on the Flexible Working Hours Recording Sheet. This sheet is completed on a daily basis with:-  
Time In  
Time Out  
Lunch Break  
Any hours credited for Authorised Absence  
Any hours debited for Authorised Absence  
Lieu Time

Daily totals should be calculated and then the sum of the daily figures added to give a weekly total.

- 18.3 An example of a Flexible Working Hours Recording Sheet can be found on the intranet – See [Flexible Working Hours Recording Sheet](#).
- 18.4 The employee will need to ensure that they check and verify their flexible working hours recording sheet at the end of each period. The record is retained by the employee and produced when required for Audit purposes.
- 18.5 Electronic access systems and registers may also be used by Services to assist in the monitoring process.
- 18.6 Where Service registers are utilised, each employee will be expected to enter his/her time of arrival and departure in the Service registers.
- 18.7 Officers starting or finishing the working day at a location other than the usual signing in/out point should indicate this in the Service register in advance (if known). The actual times of starting and/or finishing should then be added to the Service register alongside this entry as soon as possible.

## **19. Abuse of the Scheme**

- 19.1 Employees who abuse the Scheme can be expected to be withdrawn from the Scheme and will revert to normal fixed working hours.
- 19.2 Employees may also be subject to disciplinary action.

## **20. Situations and Solutions**

- 20.1 With the introduction of any Flexible Working Hours Scheme it is impossible to try and predict every eventuality or situation that is likely to arise. Listed below are certain circumstances which may be of use to you in the future.

### **20.1.1 Sickness**

- |               |   |   |
|---------------|---|---|
| (a) Situation | - | I have booked in the morning but was forced to leave mid morning through sickness |
| Solution      | - | You should credit yourself for the time you were off sick.                        |

- |               |   |   |
|---------------|---|---|
| (b) Situation | - | I have been forced to leave mid afternoon because of sickness.  |
| Solution      | - | All the credit you have accrued in the morning will stand, however, similarly to the last solution you will be credited for the time you are off sick in the afternoon. |

### 20.1.2 **Working Lunch**

- |               |   |   |
|---------------|---|---|
| (a) Situation | - | I have had a working lunch should I book anything?  |
| Solution      | - | You have an obligation under the Flexible Working Hours Scheme to take a minimum lunch break you must still debit yourself at least ½ hour on your recording sheet. |

### 20.1.3 **Part-Time Workers**

- |               |   |  |
|---------------|---|--|
| (a) Situation | - | I work part time, is my bandwidth the same as these specified?   |
| Solution      | - | Not necessarily. Your bandwidth hours can be set at the discretion of your Chief Officer ensuring that the service needs are met.                |
| (b) Situation | - | If I work part time am I still entitled to one and a half days flexi leave per accounting period?  |
| Solution      | - | As you work part time your flex leave entitlement will be calculated pro rata to the hours you work eg (3/10 <sup>th</sup> of contracted hours). |

### 20.1.4 **Working away from the Job**

- |               |   |   |
|---------------|---|---|
| (a) Situation | - | The nature of my job means I often have to start and finish work on site, how do I accommodate this in my recording sheet?  |
| Solution      | - | Every Flexible Working Hours Scheme is based on mutual trust. In these circumstances you are trusted to indicate an accurate time in your recording sheet at your earliest opportunity. |

### 20.1.5 **General**

- |               |   |  |
|---------------|---|--|
| (a) Situation | - | I have tried flexi-time but don't like it, can I refer back to normal office hours?  |
| Solution      | - | The Flexible Working Hours Scheme is voluntary therefore if at the end of an accounting period you wish to withdraw from the scheme you are quite at liberty to do so. It must be stressed, however, that once you have withdrawn from the scheme you will not be re-admitted unless you |

- have the consent of your Section Head/ Supervisor.
- (b) Situation - I decided initially not to participate on the Flexible Working Hours Scheme. However, having seen the advantages of Flexible Working Hours I would now like to join the scheme, is this possible?
- Solution - As stated previously, the Flexible Working Hours Scheme is voluntary, therefore if at the end of an accounting period you wish to join the scheme, you may do so providing you have the approval of your Section Head/Supervisor.
- (c) Situation - I am unhappy about the way flexi-time is administered in my Section what can I do?
- Solution - Contact your Head/Supervisor, however, if you do not gain satisfaction your only course of action is to refer to the existing grievance procedure.

## **THE CARRY OVER OF ANNUAL LEAVE POLICY**

The procedure and criteria are set out below:-

- (a) All decisions regarding carry over of annual leave within Service Areas are delegated to Chief Officers.
- (b) All employees will be allowed to carry over 5 days (pro-rata) unused leave from one year to the next. Carried over leave may be taken throughout the following leave year. However, local service planning or rota'd arrangements may be put in place to enable a balanced and fair approach to meet service needs and employee preferences when leave is to be taken.
- (c) Each November, Chief Officers will contact any employee who at that time has more than one third of his/her annual leave outstanding. The employee will be reminded that 5 days annual leave may be carried over into the following annual leave year.
- (d) For additional requests to be considered they must be received by the appropriate Chief Officers in writing by 31 December of each year. The written requests will then be considered by the Chief Officer who will apply the following criteria in determining whether to support such requests:-
  - (i) the postholder must be adjudged to have been engaged on a special project or other work activity of exceptional significance or importance to the Service where the operation of strict time constraints have prevented the individual from taking his/her full leave entitlement; and/or
  - (ii) the postholder has been unable to take sufficient annual leave because of pregnancy; and
  - (iii) whether sufficient staff will be available to provide adequate cover, without undue pressure, during the eventual absence of the postholder.

With regard to paragraph (d)(i) above, it is impossible to be prescriptive regarding the nature or type of work which would satisfy this criterion.

The Authority has considered applications on various occasions and has granted carry over of leave to staff engaged on the following activities:-

- tendering arrangements
- local management of schools/financial management
- service restructuring
- budgetary reasons
- prolonged staff shortages
- legislative reasons
- legitimate extra hours working to meet unavoidable deadlines

Staff have also been allowed to carry leave over to the following leave period because of staff shortages and the general pressures of workload.

- (e) The Chief Officer having applied the above criteria will decide whether to support or reject the request. The Chief Officer will notify employees in writing of their decision.
- (f) Those requests supported by the Chief Officer should be dealt with no later than 31 January in any year.

Chief Officers are reminded to be fair and consistent in applying these provisions. Fairness by considering each case on its own merits and consistency by having regard to decisions given to similar requests from different Services.

- (g) Carry over of annual leave is granted for exceptional reasons only.
- (h) Any leave which is carried over must be taken by the end of the following leave year, otherwise it will be forfeited.
- (i) In the event of a request being rejected, the employee will still have approximately two months in which to reduce their outstanding annual leave to five or less days (and therefore have the automatic right to carry over this leave up to the end of the following leave year). The Chief Officer should, wherever possible, ensure that individuals are given reasonable opportunity to reduce their balance of outstanding annual leave to five or less days by 31 March mindful of the exigencies of the service.
- (j) Any employees dissatisfied with a decision arising from the application of the above procedure and criteria will have recourse to the Authority's grievance procedure.
- (k) Employees also have the option to bank up to an additional 5 days (pro-rata) annual leave per year.

Employees can take 5 days (pro-rata) leave per year less than their entitlement and bank the (pro-rata) days to take in the future – see [Banking Annual Leave Policy](#).

- (l) Employees may bank a maximum of 25 days (pro-rata) in total ie 5 days (pro-rata) per year for a maximum of 5 years. This will allow employees to take an extended holiday period on full pay. Employees would need to seek prior approval from management and give the required notice when wanting to take the banked leave – see [Banking Annual Leave Policy](#).
- (m) This policy does not form part of any employee's contract of employment and it may be amended by the Council at any time following consultation with recognised Trade Unions.

This policy does not apply to employees who are subject to Teachers' Pay and Conditions document.

## **CHIEF OFFICERS CARRY OVER OF ANNUAL LEAVE**

- (a) Chief Officers be allowed to carry over a maximum of the leave allowance for one year, except that those Chief Officers who currently have more than that to carry over be allowed to reduce their excess over the next three years, and
- (b) Chief Officers be required to notify the Corporate Lead for HR of how much annual leave they wish to carry over stating the reasons why they have been unable to take their leave.

## **SABBATICAL LEAVE POLICY**

### **1. Introduction**

- 1.1 The Council recognises that there may be times when employees wish to take extended periods of time away from work during the course of their employment with the Council in order to pursue other interests outside of work including but not limited to spending time with family, pursuing further education, taking an extended holiday or participating in voluntary / community work.
- 1.2 A sabbatical will be an authorised unpaid leave of absence; however, sabbatical leave does not constitute a break in the period of continuous service. When calculating the total length of service, the time taken on a sabbatical will not be counted.
- 1.3 Sabbaticals are granted at the Council's discretion and are not an entitlement.
- 1.4 This policy does not form part of any employee's contract of employment and it may be amended by the Council at any time following consultation with recognised Trade Unions.

### **2. Eligibility**

- 2.1 This scheme applies to all permanent Council employees with at least 12 months continuous service with the Council. Employees may apply for more than one sabbatical during their employment, however, any previously agreed sabbaticals may be taken into consideration before approving further requests.

### **3. Length of Sabbatical**

- 3.1 A sabbatical granted under this scheme may be for any length of time between 1 month and 12 months. Once agreed the length of the period can only be varied by mutual agreement.

### **4. Approval Process**

- 4.1 All requests for sabbaticals should be made in writing to the Director, at least 3 months before the leave of absence is to commence. The request should clearly detail the start and end date of the proposed sabbatical and outline the reasons for the leave. It may

also provide an outline on how the absence would impact on service delivery and how work may be covered during the absence.

- 4.2 The relevant Director will consider requests. The decision on whether to grant a sabbatical will be confirmed to the employee in writing within 20 working days of receiving the request.
- 4.3 Each request will be considered on an individual basis taking into account a range of relevant issues including but not limited to:
  - a. Financial implications
  - b. Workload implications for colleagues
  - c. Impact on quality and level of service provision
  - d. Statutory obligations
- 4.4 Employees granted sabbatical leave will be required to use any outstanding annual leave entitlement accrued up until the start of the sabbatical period and will not be allowed to retain it to take on their return or receive pay in lieu of annual leave.
- 4.5 Example A: entitled to 26 days annual leave and works for 3 months of her/his leave year prior to starting a sabbatical therefore would be required to take the 3 months holiday entitlement =  $26/12 \times 3 = 6.5$  days before starting the sabbatical.
- 4.6 Example B: is entitled to 26 days annual leave and works for 6 months of the leave year prior to starting a sabbatical. S/he has therefore accrued 13 days of leave however s/he has already taken 15 days leave. Therefore on return to work, the 2 days leave will be carried over and deducted from the new leave balance. However, should s/he not return to work then s/he will be required to payback to the Council the equivalent of 2 days leave.
- 4.7 Annual leave will not be accrued during the period of sabbatical leave.

## **5. Contact**

- 5.1 Methods and frequency of contact during the period of leave must be agreed between the employee and their line manager before the leave period begins.  
Where organisational changes are proposed in the Council during the leave period which may affect the employee, every attempt will be made to contact them in a timely manner and treat them in same way as other employees.
- 5.2 The employee is required to keep the Council informed of any change of address or change of circumstances that arise during the sabbatical.

## **6. Effect on Employee Terms and Conditions of Employment**

- 6.1 There is no entitlement to payment of salary, allowances, annual or bank holiday leave, occupational sick pay or occupational maternity / paternity pay during sabbatical leave.
- 6.2 All Council property should be returned prior to the start of the sabbatical unless otherwise agreed with the Manager.

- 6.3 The purpose of sabbatical leave is to allow employees time away from work to pursue personal interests such as travel, voluntary/community work, study or to spend more time with family. It is not to be used for work purposes and therefore employees are restricted from acting as a consultant/contractor or working as an employee/director for any other organisation or individual unless they have the express written consent of the relevant Director. In considering the request the Director will need to ensure that the work does not, in view of the Council, conflict with the Council's interest or in any way weaken public confidence in the conduct of the Council's business. This does not apply to casual work.
- 6.4 The Council will not be liable for any tax or national insurance contributions during sabbatical leave. As a period of sabbatical could affect the right to and payment of Statutory Payments such as SSP, SMP or Working Tax Credits - it is recommended that contact should be made with the local DSS Office for advice and guidance on this matter.
- 6.5 Any cost of living salary increases that the Council implement during the period of leave will be applied accordingly once the employee returns to work.

## **7. Pension Scheme**

- 7.1 You can elect to pay SCAPCs to cover 'lost' pension if you are absent from work due to authorised leave of absence on no pay.
- 7.2 If you want to pay SCAPCs, you must elect to do so within 30 days of returning to work. You will then pay one third of the cost while your employer pays two thirds. You can pay SCAPCs as a one-off lump sum or regular payments over a period of time. If you don't elect to pay SCAPCs within 30 days, you can still buy back the 'lost' pension, but you would have to pay the whole cost under a regular APC contract and your employer wouldn't pay any of the cost.
- 7.3 Employees on authorised leave of absence from the Pension Scheme will remain eligible for death in service benefits.

## **8. Child Care Vouchers**

- 8.1 Participation in the Childcare Voucher Scheme will cease at the start of the sabbatical period and on return employees will be required to make a new application to re-join the scheme.

## **9. Lease Cars**

- 9.1 Employees who have a salary sacrifice lease car must continue with their car payments during the period of sabbatical leave.

## **10. Sickness Absence**

- 10.1 Where an employee experiences long term sickness during their sabbatical (i.e. a certified medical condition either in excess of or likely to be in excess of 4 weeks) then the employee can choose to contact their manager and request to terminate their



sabbatical. The employee would be treated as having returned to work and therefore become eligible for occupational sick pay. The remainder of any sabbatical leave would be forfeited.

## **11. Return to Work**

- 11.1 Employees returning to work following a sabbatical will normally return to the same job, however, if this is not reasonably practical then the council will make every effort to redeploy the employee to a similar role on a similar grade. Should the employee wish to return to work early, they must make a request to do so in writing, allowing a minimum of one month's notice. The Director will consider the request and confirm the decision in writing to the employee, advising them of the revised return to work date.
- 11.2 If the employee fails to return to work on the agreed date, the Council will make every effort to contact the employee to confirm the situation and the reasons for this. If the council is unable to contact the employee, it will be assumed that the employee has resigned and the last day of service will be recorded as the agreed date of return.

## **12. Right of Appeal**

- 12.1 Employees have the right to appeal if their request for a sabbatical has been refused or an early return date has been refused. Appeals will be to the Corporate Lead for HR. The decision of the appeal hearing is final and no further right of appeal exists.

## **TERMINATION OF APPOINTMENTS**

All Council employees must work the appropriate notice period when terminating their employment.

Notice will always be in writing and it is essential that a copy of the resignation letter and the appropriate notification of leaving form is forwarded to HR (Human Resources, Calderdale Council, 3<sup>rd</sup> Floor, Westgate House, Westgate, Halifax, HX1 1PS) as soon as is possible and as to avoid administrative errors and the possible overpayment of salary.

Services need to be aware of payroll/computer Vision/input deadlines.

Subject to any overriding statutory provision or national agreement, the period of notice on either side to terminate employment will be as follows:-

Chief Officers	-	3 months	
New Employees on SCP35, the equivalent or above appointed on or after 27 May 2002	-	2 months	(PO3 – Special Scale C)
Officers	-	1 month	(Sc 1 – SO2/PO2)

### **Please Note:**

- (i) 'Chief Officers' includes the Chief Executive, Directors, Chief Officers and Heads of Service.
- (ii) All new and those existing employees appointed on or after 27 May 2002 on SCP35, the equivalent, or above, will be required to give two months' notice.
- (iii) Existing employees on SCP35, the equivalent, or above, who were appointed prior to 27 May 2002 remain on 1 month's notice.

## **TERMINATION OF EMPLOYMENT - EMPLOYEES OCCUPYING SERVICE TENANCIES**

Upon the termination of employment, some employees who have been living in accommodation given to them to better carry out their duties and responsibilities as a Council employee (so called "Service Occupancies" such as school caretakers etc), have been allowed to remain in their property. Whilst care should be taken lest the Council be perceived as summarily evicting its long standing servants, some of whom are retiring on ill-health grounds or have reached retirement age, allowing the former employee to remain in the property for an extended period could lead to the argument that a new tenancy has been created.

Therefore, when an employee is either given notice to terminate their employment with the Council or the Council is given notice by the employee, that person should as soon as possible be given a reminder in writing by the Council's Legal Services Manager that they should quit their accommodation on the day their employment ceases. This is necessary to protect the Council's legal position. Any alteration to a date on which employment is to terminate and any other relevant factors should also be made known to the Legal Services Manager.

It should be noted that under no circumstances should any rental be accepted for the property after the cessation of employment.

If rental payments are being made automatically by Standing Order, urgent action by Council Officers may be necessary to ensure that future payments are politely refused.

Of course, nothing above prevents the granting of a few weeks grace to allow a former employee to find alternative accommodation, clear the property etc.

Finally, it is considered good practice to remind employees (in writing and keep a copy) both when they first enter into a service tenancy and at the time their employment is first known to be terminating, that they should ensure their names are placed on the Housing List.

## **THE WORKING TIME REGULATIONS 1998**

Local Agreement between Calderdale Metropolitan Borough Council and recognised Trade Unions representing the employees of the Council.

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## **PREAMBLE**

The European Working Time Directive (No 93/104) was adopted on 23 November 1993 under the health and safety provisions contained in Article 118a of the Treaty of Rome. The Government has now made the Working Time Regulations 1998 which give effect to the implementation of the Directive in the UK. The Regulations also contain provisions which implement the requirement in the European Young Workers Directive (No 94/33) to create entitlement to certain minimum rest breaks and periods, and to health and capacities assessments if assigned to night work.

The Regulations came into effect on 1 October 1998.

The present working arrangements of the majority of employees of Calderdale Metropolitan Borough Council ("the Council") fall clearly within the limits set by the Regulations and are therefore substantially unaffected.

The exception to this concerns certain specific rights and obligations which have either a common application throughout the Council or to particular services and workers.

The purpose of this Agreement is to identify and establish the specific arrangements which are to apply within the Council in order to implement the Regulations. It deals with those provisions within the Regulations which have a general application and sets out how they are to apply and the specific exclusions or modifications which are required in order to ensure that essential services to the public are properly maintained.

**(a) WORKING TIME**

- 1 Working time in relation to a worker is defined in the Regulations as meaning:-
  - (i) any period during which he is working, at his employer's disposal and carrying out his activities or duties; and
  - (ii) any additional period which is to be treated as working time for the purpose of these Regulations under a relevant agreement.
2. For the purpose of determining the working time of employees of the Council it will exclude any period during which the worker is:
  - (i) on a list of employees who may, subject to availability, be called upon to return to work but is otherwise free to pursue their own out of work activities;
  - (ii) rostered for specific periods of "standby duty" and required to attend for work if called upon to do so;
  - (iii) rostered periods of "sleeping in" duty in a residential establishment and available to work if necessary;
  - (iv) time spent travelling to and from the employees normal place of work, other than for reasons of a return to work out of normal hours.
3. However any time during the periods referred to in 1.2(i)(ii) and (iii), when an employee is actually required to return to work and resume their normal or other specified duties will be regarded as working time for the purposes of the Regulations.

**(b) REST BREAKS**

1. Where an adult worker's daily working time is more than six (6) hours he is entitled to a rest break.
2. Other than as specified in paragraph 2.3 below employees of the Council will be entitled to take an unpaid rest break of twenty(20) minutes minimum duration. For those employees whose working day is normally between the hours of 0800 and 1800 hours the break will be taken between 1200 and 1400 hours. Employees whose working day is different from this will be entitled to an equivalent rest break not later than six (6) hours from the commencement of their working day.

The underlying principle of the unpaid rest break is that employees are entitled to leave their normal place of work if they wish to do so, for an uninterrupted period of rest.

3. In circumstances where for operational or other reasons it is impractical for an employee to leave their normal place of work in order to take a rest break the employee will be paid for all hours of attendance from the official start to the end of the specified working period.

In these circumstances the employee will, in prior consultation with their supervisor, be entitled to take a rest break of not more than twenty (20) minutes at their own discretion and at an appropriate time. Payment for the full period of attendance at the workplace is in recognition that the rest break may be interrupted for operational reasons and the need to resume normal duties or respond to a particular situation.

**(c) WEEKLY WORKING WEEK**

1. Any employee of the Council who works on average including overtime, in excess of forty eight (48) hours for each seven day period will do so on an entirely voluntary basis.

In any such cases, which it is anticipated will be very few in relation to the Council's total workforce, a written agreement between the Council and the individual worker will be required in which the employee confirms his agreement that the limit should not apply in his case.

A copy of the Council's "Individual Voluntary Agreement" format is attached at Appendix 1 to this Agreement.

**(d) NIGHT WORK**

1. For the purposes of the Regulations an employee of the Council shall be deemed to be a night worker if he works at least three hours of his daily working time on the majority of days on which he works, during night time. Night time will be regarded as the period from 2300 to 0600 hours.
2. Designated night workers employed by the Council will be excluded by reason of the exceptions provided in Regulation 21 (b) and (c) from the limit in Regulation 6(1) which states that: "A night worker's average normal hours of work shall not exceed eight hours for each 24 hour period". However, any employee affected by this exclusion will be granted an equivalent period of compensatory rest. Compensatory rest will be provided as soon as reasonably practical in all the circumstances but in any event during the current "reference period".

Explanatory Note: Night workers employed by the Council are typically engaged in security and surveillance activities requiring a permanent presence in order to protect property and persons, eg caretakers of public buildings and halls; or where continuity of care and services is required, eg care staff in residential establishments.

**(e) NIGHT WORK - HEALTH ASSESSMENT**

The Council will provide designated night workers or a worker before being assigned to duties that would make them a night worker with a free health assessment. Free means that the assessment will be undertaken without cost, in terms of wages or other expenses, to the worker or prospective worker.

The health assessment will provide for a two stage process. Stage one (1) will apply in all cases and stage two (2) in appropriate circumstances only.

The first stage will involve the completion by the worker or prospective worker of a medical screening questionnaire compiled by the Council with guidance from a qualified health care professional. A copy of the "Health Assessment Questionnaire" is attached at Appendix 2 to this Agreement.

In the event of a response to the medical screening questionnaire highlighting any possible cause of concern the individual will be referred to the Council's Occupational Health Unit for a medical assessment to determine their fitness to work at night.

Designated night workers will be given the opportunity to have a free health assessment as soon as is reasonably practicable after 1 October 1998 and at three (3) yearly intervals thereafter.

#### **(f) RECORDS**

Each service of the Council will establish, maintain and retain for a period of not less than two (2) years records which are adequate to show:-

- (a) a worker's average working time including overtime, taken over the relevant reference period, does not exceed forty-eight (48) hours for each seven day period;
- (b) where a worker has agreed to work in excess of the forty-eight (48) hours weekly working limit - the actual number of hours that the worker has worked;
- (c) any worker who has agreed to work in excess of the forty-eight (48) hour weekly working limit has voluntarily entered into an "Individual Agreement" with the Council that the limit should not apply in his case;
- (d) a night worker's average normal hours of work, for each 24 hour period, when taken over the relevant reference period;
- (e) a current valid "health assessment" exists for each designated night worker, or prospective worker before being assigned to night work.

#### **(g) REFERENCE PERIODS**

- (1) Other than as specified in paragraph 7.2 below the standard reference period which will be used by all services of the Council for the purpose of determining a worker's average working time (paragraph 1) shall be a continuously rolling period of seventeen (17) weeks, ie the seventeen (17) weeks immediately prior to the current date.
- (2) For reasons concerning:- the seasonal effect upon the organisation of work; security and surveillance activities requiring a permanent presence in order to protect property and persons; the need for continuity of service and care, the reference period for the employers listed in the schedule attached at Appendix 3 to the agreement shall be fifty-two (52) weeks.



- (3) The reference period to be used for the purpose of determining the normal average hours of work for an employee of the Council who is designated as a night worker (paragraph 4) shall be in accordance with paragraphs 7.1 and 7.2 above.

**(h) WEEKLY REST**

1. The rostered working arrangements for all employees of the Council will include an entitlement to a minimum uninterrupted rest period of not less than twenty-four (24) hours in each seven (7) day period. This may be averaged over a two (2) week period, ie two days off in a fourteen (14) day period.
2. An employee of the Council may not be required to work during a period which would otherwise be a rest period. However, if an employee volunteers to work during such a period then subject to the appropriate service manager being satisfied that it presents no risk to the workers health and safety then it is permissible to accept the employees offer to work. Any paid work undertaken in these circumstances will not qualify for compensatory time off.

**(i) DAILY REST**

1. Other than as specified by the exclusions in paragraph 9.2 below employees of the Council will be entitled to a rest period of not less than eleven (11) consecutive hours in each twenty-four (24) hour period, ie eleven (11) hours between each working day.
2. For reasons concerning the maintenance of out of hours services to the public, the seasonable effect upon the organisation of work, security and surveillance activities requiring a permanent presence in order to protect property and persons, the need for continuity of service or care, the daily rest period referred to in paragraph 9.1 above shall not apply to those employees listed in the schedule attached at Appendix 4 to this agreement. However, any employee affected by the exclusion will be granted an equivalent period of compensatory rest. Compensatory rest will be provided as soon as reasonably practical in all the circumstances but in any event during the current "reference period".

**(j) ANNUAL LEAVE**

A worker is entitled to at least three (3) weeks' paid leave each year, rising to four (4) weeks after 23 November 1999. A worker must have been continuously employed by the employer for at least thirteen (13) calendar weeks before the entitlement to annual leave arises.

**(k) CALCULATING WORKING TIME**

1. For guidance only examples of how average working time (Paragraph 3) and night work (Paragraph 4) is to be calculated are shown at Appendix 5 to this Agreement.
2. The calculation of average weekly working time must take account of periods where a worker is absent for reasons of: annual leave, sick leave, maternity leave and any hours which the employee has voluntarily agreed to work in excess of the weekly working limit.

The average weekly hours can be calculated by using the formula  $\frac{A+B}{C}$

Where A is the total number of hours worked during the reference period.

B is the total number of hours worked, immediately after the reference period, during the number of working days equal the number of days missed due to annual leave entitlement, sick leave and maternity leave; and

C is the number of weeks in the reference period.

3. The average hours worked as night work is calculated by dividing the number of a worker's normal hours of working time in the reference period by the total number of days in the period, less the number of rest days to which the worker is entitled under the Regulations.

The average night hours can be calculated using the formula:  $\frac{A}{B-C}$

Where A is the number of hours during the applicable reference period which are normal working hours for the worker.

B is the number of days during the applicable reference period.

C is the number of hours of weekly rest to which a worker is entitled under the Regulations (ie 24 hours for each seven days) divided by 24. (NB: This is not the total amount of hours that the worker is at rest in each week. Only the hours making up the weekly rest period that the worker is entitled to under the Regulations are counted).

## **(l) INTERPRETATION**

Any matters of interpretation of this Agreement shall be referred to the Corporate Lead for HR for determination, in consultation with the Trade Union side as appropriate.

## **(m) IMPLEMENTATION**

The effective date of implementation of this Agreement will be 1 November 1998.

## THE WORKING TIME REGULATIONS 1998

### INDIVIDUAL VOLUNTARY AGREEMENT

In accordance with the provisions of Regulation 5(1) of The Working Time Regulations 1998 I confirm that I ( ) have agreed with my employer Calderdale Metropolitan Borough Council that Regulation 4(1) of the Regulations shall not apply in my case.

I understand that I am not under any obligation to work in excess of an average of more than forty-eight (48) hours, including overtime, for each seven (7) day period. This Agreement by me is therefore purely voluntary and it means that:-

- (i) my working hours will not be limited to an average of forty-eight (48) hours for each seven (7) day period;
- (ii) I may withdraw from this Agreement at any time upon giving my employer Calderdale Metropolitan Borough Council a minimum of one (1) calendar month's notice to that effect;
- (iii) the Council is also entitled to bring this Agreement to an end by giving me a minimum of one (1) calendar month's notice to that effect;
- (iv) the effective date of commencement of this Agreement will be

I confirm my agreement to the above terms and acknowledge that I have received a copy of this document for my personal information and records.

Signature ..... Date .....

**HEALTH ASSESSMENT QUESTIONNAIRE**

**DETAILS TO FOLLOW**

## APPENDIX 3

**SCHEDULE** of employees to whom a fifty-two (52) week reference period shall apply for the purpose of determining the workers average working time.

<b><u>Service</u></b>	<b><u>Employees</u></b>
Leisure Services	Employees engaged in operational work in the Grounds Maintenance DSO, Forestry, Manor Heath Nursery, Street Cleansing, DSO Workshop, Public Halls, the Victoria Theatre and the Park Rangers
Law and Administration	The Mayor's Attendant, Town Hall Porters
Social Services	All employees in residential establishments
Technical Services	All Building Maintenance employees. Out of Hours Emergency Service Operators in the Transport Division
Environmental Health Services	All employees engaged in operational waste disposal work

## APPENDIX 4

**SCHEDULE** of employees excluded from the "Daily Rest" provisions, Regulation 10(i) of the Working Time Regulations 1998.

<u>Service</u>	<u>Employees</u>
Leisure Services	Leisure Centre Duty Managers, Assistant Duty Managers and Maintenance Engineer, employees of the Victoria Theatre, Public Hall Supervisors, Operational employees in Street Cleansing.
Law and Administration	The Mayor's Attendant
Social Services	All employees in residential establishments. Emergency duty team members. Home Care Assistants on nominated client duties.
Technical Services	Building Maintenance employees. Out of Hours Emergency Service Operators in the Transport Division; Markets Technicians, Caretaker and Attendant

**CALCULATING WORKING TIME****AVERAGE WEEKLY WORKING TIME****EXAMPLE 1**

An employee of the Council has a normal working week of 39 hours, worked over 5 days. During the standard reference period, which for the purpose of this example will be regarded as 17 weeks, the employee works 10 hours a week overtime for 9 of the 17 weeks.

There are no absences during the reference period due to annual leave, sick leave or maternity leave.

Therefore, the employees average working time during the reference period is  $\frac{A+B}{C}$

Where      A      =       $(9 \times 49) + (8 \times 39) = (441) + (312) = 753$

B      =      0

C      =      17

Therefore, average working time =  $\frac{753}{17} = \underline{44.3 \text{ hours per week}}$

**EXAMPLE 2**

An employee of the Council has a normal working week of 39 hours, worked over 5 days. During the reference period, which for the purpose of this example will be regarded as 52 weeks, the employee works 12 hours a week overtime for 22 weeks during the spring and summer months. The full leave entitlement of 25 days is taken during the period, and the employee is also absent due to sickness for 10 days.

The employee's average working time during the reference period is =  $\frac{A+B}{C}$

Where      A      =       $(22 \times 51) + (23 \times 39) = (1122) + (897) = 2019$

B      =      The total number of hours worked immediately after the reference period during the number of days equal to the number of days missed due to annual leave and sickness. During this 7 week period the employee works 12 hours a week overtime for 6 weeks.

Therefore  $(6 \times 51) + (1 \times 39) = (306) + (39) = 345$

C      =      52

Therefore, average working time =  $\frac{2019+345}{52} = \underline{45.46 \text{ hours per week}}$

## **AVERAGE NORMAL HOURS OF WORK FOR A NIGHT WORKER**

### **EXAMPLE 1**

A designated night worker employed in one of the Council's residential establishments works alternatively 4 nights in one week and 3 nights the next. The hours of work are 2200 to 0800.

For the purpose of this example the reference period will be regarded as 52 weeks. During this period the employee, who has less than 5 years' service, takes the full leave entitlement of 4 weeks (ie fourteen (14) nights) and is absent due to sickness for 1 week. However, these factors do not affect the calculation of normal hours and may, therefore, be disregarded.

Using the formulae  $\frac{A}{B-C}$

Where      A      =      (26 x 4 x 10) + (26 x 3 x 10) = 1040 + 780 = 1820

            B      =      52 weeks x 7 = 364 days

            C      =      52 x  $\frac{24}{24}$  = 52

Therefore, the calculation becomes (the total of hours divided by the number of days the employees could be required to work)

$$= \frac{1820}{364-52} = \frac{1820}{312} = \underline{5.83 \text{ average hours/night}}$$



# **THE WORKING TIME REGULATIONS 1998**

## **Notes for Guidance**

on

The Implementation of the Regulations and the  
Council's Local Agreement

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March 1999

## **PREFACE**

Prior to the Working Time Regulations 1998 coming into force on 1 October 1998 there has traditionally been very little statutory regulation of working time in the UK. The few statutory provisions that did exist in the past were confined to certain sectors of industry and many of them were repealed by the last Government. However, the Working Time Regulations 1998, which were introduced in order to implement the European Working Time Directive (No 94/104), and the provisions relating to working time in the Young Workers Directive (No 94/53) give rise to wholly new rights and obligations relating to work and rest.

## **THE WORKING TIME REGULATIONS 1998**

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## **1. INTRODUCTION**

These "Notes for Guidance" are intended to provide managers in Calderdale MBC with information about the essential features of the Working Time Regulations 1998 which came into effect on 1 October 1998. They also deal with the implementation of the Regulations in the Council and offer some supplementary advice about the Local Agreement which was concluded with the trade unions and came into effect on 1 November 1998. You are advised to read these notes in conjunction with the Local Agreement.

The notes are in three main parts. The first part deals with who is covered and what is to be regarded as working time for the purpose of the Regulations. The second is a brief summary of the Regulations which is intended for "quick reference" and the third is a detailed commentary on the particular provisions and their application in the Council.

I must emphasise that they are intended for guidance only and should not be regarded as a complete or authoritative statement of the law. The notes will be kept under constant review and as case law develops in this new area of employment law further advice and guidance will be provided to employing services as appropriate.

## **2. WHO IS COVERED BY THE REGULATIONS:**

The Regulations apply to workers over the minimum school leaving age. The definition of worker covers those with a contract of employment plus a wider group who undertake work under other forms of contract (eg agency and temporary workers, freelancers etc) but does not cover the self employed. The Regulations exclude from scope workers involved in the following activities or sectors of activity - transport; sea fishing; other work at sea; and doctors in training. It also excludes certain activities of the "civil protection services".

Therefore, with the exception of the Council's drivers, who are at present covered by other regulations governing their hours of work, all other employees of the Council may be regarded as covered by the provisions of the Working Time Regulations 1998.

There are some special provisions which relate to adolescent workers. These are workers who are above the minimum school leaving age but under eighteen (18). I will deal with these special provisions at the appropriate stage in these guidance notes.

## **3. WHAT ABOUT TEMPORARY WORKERS**

With the possible exception of annual leave entitlement, which I will deal with later, employees who are engaged by the Council on a fixed term or some other temporary contract are covered by the Regulations and the Council is responsible for ensuring compliance. However, in the case of temporary workers supplied by an agency, who is responsible for ensuring proper compliance with the Regulations is less clear. Generally and in the absence of any specific agreement to the contrary between the Council and the agency it is likely to come down to who is responsible for paying the worker or does in fact actually pay the worker.

It is my view, therefore, that if the Council pays a fee to the agency for the services of a worker but the agency actually pays the individual then it is the agency who is responsible for ensuring compliance with the Regulations.

#### **4. IDENTIFYING WORKING TIME**

The Regulations define working time in relation to a worker as any period which he is working, at his employer's disposal and carrying out his activities and duties and any additional period which is to be treated as working time for the purpose of the Regulations under a "relevant agreement".

Clearly, therefore, this definition with its inherent ambiguity gives rise to the need to identify exactly what is to be regarded as working time in order to be able to determine whether or not the various limits and requirements of the Regulations are being properly complied with.

In general for most practical purposes this can be regarded as work undertaken by a Council employee on their normal duties and responsibilities at their designated place of work. However, there are certain other conditions of service, affecting the working arrangements of particular groups and categories of Council employees, which it is necessary to have regard to in arriving at the identification of working time. These are principally concerned with the various call-out and stand-by arrangements which are in operation in the Council and also with travelling time.

Paragraph 1 of the Local Agreement on the implementation of the Working Time Regulations 1998 deals fully with how these particular matters are to be regarded. However, in summary any time that an employee is required to be available to work if called upon to do so but does not actually work is not included in working time. Whereas any period of time when an employee does actually return to work and resume their normal or other specific duties is to be regarded as working time for the purposes of the Regulations.

#### **5. A SUMMARY OF THE MAIN PROVISIONS**

The main provisions of the Regulations which directly affect employees of the Council are:-

- **a limit on the average weekly working time of forty-eight (48) hours**

NB: The average is calculated over a standard reference period of seventeen (17) weeks unless a longer period is agreed in a relevant agreement. Individual workers can also voluntarily agree to work longer hours. However, they cannot be made to do so and even if they have previously agreed to do so they can withdraw their agreement at any time.

- **a limit of an average of eight (8) hours normal daily working time in any twenty-four (24) hour period for designated night workers**

NB: The standard averaging period is again seventeen (17) weeks. However, this can be extended by a relevant agreement for special reasons. Most of the Council's night workers are covered by such an extension in the Local Agreement. Workers can also be excluded from the eight (8) hour limit by agreement and this is the case for most of the Council's night workers.

- **adult workers are entitled to a minimum twenty (20) minute rest break if their working day is longer than six (6) hours. Adolescent workers (ie over the minimum school leaving age but under eighteen (18)) are entitled to a minimum of thirty (30) minutes rest break if they work longer than four and one half (4½) hours.**

NB: The entitlement to rest breaks for adult workers can be modified by a relevant agreement. However, if the entitlement does not apply or is modified the worker must be permitted to take an equivalent period of compensatory rest.

The flexibility to modify the entitlement to rest breaks does not generally apply in the case of adolescent workers.

- **adult workers are entitled to a rest period of eleven (11) consecutive hours between each working day. Adolescent workers are entitled to an uninterrupted period of twelve (12) hours rest in each twenty-four (24) hour period during which they work.**

NB: The entitlement to a rest period for adult workers can be modified or excluded in special circumstances or by a relevant agreement. The flexibility to modify the entitlement to a rest period does not generally apply in the case of adolescent workers.

- **adult workers are entitled to an uninterrupted rest period of not less than twenty-four (24) hours in each seven (7) day period. This may be averaged over a two week period, ie an entitlement to two days' rest over a fortnight. Adolescent workers are entitled to two days rest in each week. This cannot be averaged over a two week period.**

NB: The entitlement to a weekly rest period for adult workers can be modified or excluded in special circumstances by a relevant agreement. The flexibility to modify the entitlement to a weekly rest period does not generally apply in the case of adolescent workers.

- **an employer must provide a night worker, or a worker before being assigned to duties that would make them a night worker, with the opportunity to have a free "health assessment" (in the case of an adult worker) or a free "health and capacities" assessment in the case of an adolescent worker if they work during the period 2200 to 0600 hours. The opportunity to have further assessments at regular intervals must also be provided.**

NB: There is no flexibility to modify or exclude this requirement of the Regulations.

- **a worker is entitled to at least three (3) weeks' paid leave with effect from 1 October 1998 rising to four (4) weeks after 23 November 1999.**

NB: A worker must have been continuously employed by the employer for at least thirteen (13) calendar weeks before the entitlement to annual leave arises.

These provisions are common to both adult and adolescent workers and there is no flexibility to exclude or devalue them.

## **6. A COMMENTARY ON THE MAIN PROVISIONS**

Having previously summarised the main provisions of the Regulations it is appropriate and hopefully useful, to offer some specific comments and advice on their implementation in the Council.

It is important to emphasise at the outset that the working arrangements of the overwhelming majority of the Council's employees are substantially unaffected by this new employment legislation (the Regulations). However, a small but significant minority are affected and in order, therefore, to avoid, or at least minimise, any potential future problems it is essential that all reasonable steps are taken to ensure proper compliance with the Regulations.

## **7. THE WORKING TIME LIMITS ("the 48 hour week")**

The Council is required to take all reasonable steps to ensure that its employees do not work more than an average, including overtime, of forty-eight (48) hours a week over the reference period.

This does not mean that an employee cannot work more than forty-eight (48) hours in a particular week. However, what it does mean is that:-

- (i) The hours worked in excess of forty-eight (48) in a week when included in the calculation of the average over the reference period do not result in the average exceeding forty-eight hours a week. In other words an employee may work in excess of forty-eight in a week without contravening the Regulations provided the average does not exceed 48 hours.
- (ii) An individual employee may freely choose to agree to work in excess of the forty-eight (48) hour average weekly limit. However, I must emphasise that an employee of the Council cannot be required to do this and it must therefore be entirely voluntary.

In any such cases, which it is anticipated will be very few in relation to the Council's total workforce; a written agreement between the Council and the individual worker will be required in which the employee confirms his agreement that the limit should not apply. A copy of the Council's "Individual Voluntary Agreement" format is attached for reference at Appendix 1 to the "Local Agreement" on the implementation of the Regulations.

One potential area of difficulty which I do need to bring to your attention regarding Individual Voluntary Agreements is the fact that the employee can withdraw from the agreement at any time upon giving the Council due notice to that effect. To some extent, therefore, the employing service may become something of a "hostage to fortune" and it is therefore important to be alert to the possibility when entering into such an agreement. Conversely I do, of course, recognise that some employees may wish to maximise their income by maintaining a high level of weekly working hours. However, there is a need to ensure that proper management control is exercised in order to avoid either the worker or the Council being put at unnecessary risk.

## **8. REFERENCE PERIODS AND CALCULATING AVERAGE WORKING TIME**

The terms "reference period" and "calculating average working time" have already been used a number of times in these notes and they will feature again when I refer to night workers. Therefore, before moving on to other matters a more detailed explanation of what they mean is appropriate.

The Regulations refer to a standard reference period of seventeen (17) weeks, which in the absence of any agreement to the contrary is the period of time which is used to calculate the average working hours of an employee and also to determine whether the night work limits are being complied with. The reference period can be set by a relevant agreement as consecutive periods of seventeen (17) weeks or alternatively it can be a continuously rolling period of seventeen (17) weeks immediately prior to the current date. Under certain circumstances relating to the nature of the work being done it is possible to conclude a collective agreement to extend the reference period to a period of up to fifty-two (52) weeks.

The Council has concluded an agreement (the Local Agreement) with the trade unions establishing the reference period for the majority of employees as a continuously rolling period of seventeen (17) weeks. What this means in practice is that in order to keep check of an employee's average working hours the total number of hours worked during the seventeen (17) weeks immediately prior to the current date is used as the basis for the calculation of the average. Examples of how to calculate average weekly working time can be found at Appendix 5 of the Local Agreement.

Using the flexibility available in the Regulations to extend the reference period, for objective or technical reasons, a fifty-two (52) week reference period has been agreed with the trade unions for particular groups of employees in certain services of the Council. Details of who is included in this can be found at Appendix 3 of the Local Agreement.

## **9. NIGHT WORK**

### **Who is a night worker?**

The Regulations provide for an agreement to define who is to be regarded as a night worker for the purpose of the Regulations. However, this must have regard to the interpretation of "night work" and "night worker" included in the Regulations which say that:



- a "night worker" is any worker who, as a normal course, works at least three (3) hours of daily working time during night time hours; and
- "night time" in relation to a worker means a period of at least seven (7) hours including the period between midnight and 0500 hours.

In the "Local Agreement" between the Council and trade unions an employee is deemed to be a night worker if they work at least three (3) hours of their daily working time on the majority of days on which they work, during night time. Night time will be regarded as the period from 2300 hours to 0600 hours.

The practical effect of this is that in order to be designated as a night worker it is necessary for an employee of the Council to work more than fifty per cent (50%) of the occasions on which they work during the period 2300 hours to 0600 hours.

### **What are the limits?**

The Regulations require an employer to take all reasonable steps to ensure that a night worker's normal hours of work in any reference period which is applicable do not exceed an average of eight hours for each twenty-four (24) hours. However, they do also provide the flexibility in special cases to modify or exclude workers from this limit and also to increase the standard reference period of seventeen (17) weeks up to a maximum of fifty-two (52) weeks by a relevant agreement.

Night workers employed by the Council are typically engaged in security and surveillance activities requiring a permanent presence in order to protect property and persons, eg caretakers and porters of public buildings and halls; or where continuity of care and services is required, eg care staff in residential establishments. The nature of this work satisfies the criteria which enables flexibility to be applied to the eight (8) hour limit. Designated night workers employed by the Council are, therefore, excluded from the "eight (8) hours in each twenty-four (24) hour limit". This means that they can work an average which exceed eight hours in each twenty four. However, any employees affected by the exclusion must be granted an equivalent period of compensatory rest. The reference period used for calculating the average hours of work for these employees is fifty-two (52) weeks. Examples of how the average normal hours of work for a night worker are to be calculated can be found at Appendix 5 of the Local Agreement.

There are no special provisions applying to adolescent workers who are night workers.

## **10. REST BREAKS**

As previously referred to in these notes an adult worker is entitled to a minimum uninterrupted break of twenty (20) minutes when their daily working time is more than six (6) hours and adolescent workers are entitled to a rest break of thirty (30) minutes when their daily working time is more than four and one half (4½) hours.

This does not affect any existing arrangements already in place in the Council which provide for in work breaks to be of longer duration than the minimum standards

established by the Regulations. For example, the Council's flexible working hours scheme which currently provides for a minimum rest break of thirty (30) minutes between 1200 hours and 1400 hours is not affected.

The emphasis in the Regulations is to ensure that people do not work too long without an entitlement to a reasonable break. Whether the break is paid or not is a matter between the Council and the employees and will depend on the particular circumstances. In general, however, rest breaks taken by the Council's employees will be unpaid. The underlying principle being that the employee is entitled during their unpaid break to leave their normal place of work if they wish to do so and follow their own interests.

In limited circumstances it may be difficult in practical and operational sense for workers to leave their place of work in order to take a recognised uninterrupted break. For example, employees working a waking night duty between the hours of 2200 and 0800 hours in a residential establishment are unlikely to benefit from the opportunity to leave the premises during the early hours of the morning. However, more significantly their continued presence in the establishment means that they are available to respond to an emergency if necessary. In these and similar circumstances the employee will, in prior consultation with their supervisor, be entitled to take a rest break of not more than twenty (20) minutes at their own discretion and at an appropriate time. However, the employee will be paid for all hours of attendance from the official start to the end of the specified working period ie the period of break will be paid.

These arrangements are dealt with in Section 2 of the Local Agreement.

## **11. DAILY REST**

An adult worker is entitled to a rest period of not less than eleven (11) consecutive hours between each working day and adolescent workers are entitled to an uninterrupted period of twelve (12) hours rest in each twenty-four (24) hours during which they work.

Clearly, in a small number of cases this provision can give rise to practical difficulty. For example, Council employees called upon to return to work in order to deal with emergency situations out of normal working hours may well have their daily rest entitlement interrupted by the needs of the service. Typically, snow clearing, securing premises, assisting at road accidents come to mind.

However, the Regulations do provide the flexibility in special cases to modify or exclude this entitlement to daily rest by a relevant agreement.

In the Local Agreement between the Council and trade unions this flexibility has been used to exclude certain categories of employees whose work is of such a nature that full compliance with the Regulations would present substantial operational, service and practical difficulties. However, it is important to note that no such exception can be made or agreed in respect of adolescent workers, ie their entitlement to twelve (12) hours rest from the end of one working day to the beginning of the next cannot be varied.

A schedule of those employees who have been excluded from the "daily rest" provisions of the Regulations can be found at Appendix 4 of the Local Agreement. These excluded employees will, however, be granted an equivalent period of compensatory rest which should be considered to be a period of rest as long as the worker was entitled but not able to take.

## **12. COMPENSATORY REST**

The concept of compensatory rest is relatively easy to come to terms with in some cases but very much less so in others.

For example, if a day worker finishes their normal rostered period of eight (8) hours work at 1700 hours and then, because of the sickness absence of a colleague, is asked and agrees to return to work to cover a shift commencing at 2200 until 0800 hours the following day, to then expect the same worker to resume their normal scheduled day duty immediately after finishing the night shift may clearly be regarded as unreasonable, in anything other than the most exceptional circumstances. The most likely outcome is that they would be given the day off following the night shift as compensatory rest.

Where it becomes more problematic is if a worker is required to return to work during a rest period for a relatively short duration in order to deal with a particular situation. At the present time, and until some case law is established which may provide further clarification on the situation I suggest that a commonsense approach is taken to the particular circumstances of each case.

## **13. WEEKLY REST**

An adult worker is entitled to an uninterrupted rest period of not less than twenty-four (24) hours in each seven (7) day period. This may be averaged over a two (2) week period, ie an entitlement to two (2) days off in a fourteen (14) day period. An adolescent worker is entitled to an uninterrupted rest period of not less than forty-eight (48) hours in each seven (7) day period. This cannot be averaged over a two (2) week period.

In the absence of any specific agreement to the contrary a seven (7) day period or a fourteen (14) day period will be taken to begin at the start of each week or as the case may be, every other week. A week will be treated as starting at midnight between Sunday and Monday.

Whilst the Regulations do provide some flexibility to exclude the entitlement to weekly rest, for adult workers, in special cases this has not been taken up by the Council in the Local Agreement concluded with the trade unions.

This does not mean that an employee cannot work on a day that would otherwise be a rest period. What it does mean is that an employee may not be **required** to work during such a period. However, if an individual volunteers to work then provided that the employee's manager is entirely satisfied that it presents no risk to the worker's health and safety then it is permissible to accept the employee's offer to work. Any paid work undertaken in these circumstances, which is effectively paid overtime, will not

qualify for compensatory time off unless the relevant "Conditions of Service" governing the workers employment determine otherwise in special cases.

#### **14. THE NEED FOR RECORDS**

Section 6 of the Local Agreement on the implementation of the Regulations sets out what records it is necessary for services of the Council to establish and maintain in order to be able to show, if called upon to do so, that the limits and requirements of the Regulations are being fully complied with.

Enforcement of the various limits and requirements of the Regulations is a matter for the Health and Safety Executive (HSE) or local authority Environmental Health Services depending upon the location in which they apply.

A worker may present a complaint to an employment tribunal on any matters relating to the employers failure to permit the worker their entitlements under the Regulations.

It is important, therefore, that adequate records are maintained. This is not to suggest, however, that a whole new and unnecessary bureaucracy is established. If adequate records already exist which are sufficient to meet the requirements set out in the Local Agreement then that should be all that is required. If not then the issue needs to be addressed without delay with a view to taking any necessary remedial action.

#### **15. HEALTH ASSESSMENTS FOR NIGHT WORKERS**

The Council is required by the Regulations to provide an adult night worker or a worker before being assigned to duties that would make them a night worker with the opportunity to have a free health assessment.

Adolescent workers are entitled to a free "health and capacities" assessment. The difference in this respect is that in addition to the employee or prospective employee being entitled to an assessment of medical fitness it will also be necessary, in the case of adolescent workers, to consider issues like physique, maturity and experience, and take into account competence to undertake the night work that has been or may be assigned. In the case of both adult and adolescent workers the opportunity to have further assessments at regular intervals must also be provided.

The Regulations do not prescribe what arrangements are necessary in order to comply with these requirements and it is, therefore, a matter which is left to local determination.

The underlying reason for establishing a requirement for a health assessment or in the case of adolescent workers a health and capacities assessment specially for night workers only is not elaborated upon in the Regulations. However, it may be reasonable to suppose that this is because although workplace hazards are unlikely, in most cases, to change with night work, risks arising from them might nevertheless be greater at night, particularly where individuals are suffering from or susceptible to certain conditions. There are few, if any, health factors that are likely to absolutely rule out night work in every case. However, some medical conditions may be made worse by night work for example, diabetes, particularly where treatment with insulin injections on a strict timetable is required - some heart and circulatory disorders, particularly where

factors such as stamina are affected - stomach or intestinal disorders, such as ulcers, and conditions where the timing of a meal is particularly important - medical conditions affecting sleep - some chronic chest disorders where night time symptoms may be particularly troublesome - other medical conditions requiring regular medication on a strict timetable.

In the context of the Regulations free means that the assessment will be undertaken without cost in terms of loss of wages or other expenses, to the worker or prospective worker.

In order to satisfy the requirements of the Regulations the Council has established a two stage health assessment process. The first stage involves the completion by the worker or prospective worker of a medical screening questionnaire. A copy of the questionnaire, which has been produced in consultation with and guidance from the Council's Occupational Health Adviser, can be found at Appendix 2 of the Local Agreement.

This questionnaire is to be completed by the employee or prospective employee and returned to the employing service where a preliminary screening of the content will be carried out. As part of this screening process a service judgement will be necessary to determine whether or not, a completed questionnaire should be referred to the Council's Occupational Health Unit for assessment by a qualified health care professional under the second stage of the Council's agreed procedure.

If a questionnaire is returned to the employing service from a night worker or prospective night worker, which highlights any particular cause for concern, either because of the affirmative responses to the questions and/or the supplementary information supplied by the individual then it should be referred to the Occupational Health Unit for assessment. For the avoidance of doubt employing service may, if they prefer to do so, refer all completed questionnaires for a professional assessment.

All referrals should be sent to me at Human Resources in the first instance where they will be registered as active cases and then forwarded without delay to the Council's Occupational Health Unit.

If a medical examination is necessary in order to establish the individual's fitness to work at night the arrangements for an appointment will be made directly between the Occupational Health Unit and the employee.

The results of the Occupational Health Adviser's assessment will be notified on the last page of the questionnaire. It will then be returned to me for recording and administrative purposes and forwarded, without delay, to the employing service for information and appropriate action.

There are some special provisions applying to adolescent workers which need to be addressed. An adolescent worker is a young person who is over school leaving age and under eighteen (18) and they are entitled to a health and capacities assessment. This means that in addition to having a health assessment consideration will also need to be given to other factors which may be regarded as falling within the general definition of capacities, these may include issues like; physique, maturity, experience

and any other qualities relevant to assessing a young person's competence to undertake the particular night work that has been assigned.

Earlier in this section I referred to the requirement within the Regulations that the opportunity for both adult and adolescent workers to have further assessments at regular intervals must be provided. In the Local Agreement this has been established at three (3) yearly intervals following the initial assessment. This may, however, be reviewed in the light of experience and as case law is developed.

In the event of the Council receiving a report from the Occupational Health Adviser advising that an existing employee is suffering from health problems which may be connected with the fact that the worker performs night work then the Council is under an obligation to consider the option of redeploying the individual to other work which is not at night.

## **16. ANNUAL LEAVE**

This section of the notes relate only to those employees of the Council who are engaged to work on temporary, seasonal or casual arrangements which are not governed by any of the recognised National Agreements on pay and conditions of service.

The Regulations determine that a worker who has been continuously employed for thirteen (13) weeks is entitled to three (3) weeks paid annual leave with effect from 1 October 1998, rising to four (4) weeks after 23 November 1999.

This particular provision regarding annual leave is substantially irrelevant to the overwhelming majority of the Council's employees who, in accordance with the conditions of service prescribed by the National Joint Council for Local Government Services, are entitled to a minimum of twenty (20) days paid annual leave plus a day's paid holiday on each of the statutory, general and public holidays as they occur. Their position is, therefore, unchanged by the new Regulations.

However, there is a small minority of workers who are employed by the Council on temporary, seasonal or casual arrangements. In these cases, it is likely that prior the Working Time Regulations 1998 coming into force, they would not have received any paid leave entitlement. The Regulations have now changed this and provided a worker has been employed by the Council for thirteen (13) weeks an entitlement to paid annual leave is established irrespective of any previous agreement to the contrary that may have existed.

It is probably unnecessary and inappropriate to go into detail in these notes for guidance on the law relating to the employment of temporary workers. However, in general terms if a worker is employed under a contract which is allowed to continue beyond a period of thirteen (13) weeks without it being formally brought to an end then an entitlement to annual leave is established. This would be the case even if one or more relatively short breaks in work occurred during the period of the contract, as these may be regarded as only temporary cessations in work not affecting continuity.

It is, therefore, important and incumbent upon services to consider carefully whether the use of temporary, seasonal or casual workers is appropriate before offering the work, which may take them beyond the qualifying thirteen (13) weeks threshold. However, where it is unavoidable then the paid annual leave provisions of the Regulations do apply.

In the absence of any agreement to the contrary an affected worker's leave year begins on 1 October 1998 and each subsequent anniversary of that date. However, if the worker's employment began after 1 October 1998 then the leave year begins on the date of commencement of employment and each subsequent anniversary of that date. Clearly this has the potential for some confusion and to become yet another administrative burden. Fortunately, however, within Calderdale Council there is already an established agreed annual leave year commencing on 1 April until 31 March in the following year. This should, therefore, now also be adopted for the small number of workers who were previously outside but have now brought into scope for the annual leave by the Regulations.

With effect from 1 April 1999, therefore the leave year for any temporary, seasonal or casual worker will be from 1 April to the following 31 March and a minimum paid leave entitlement of four (4) weeks will apply. This will, of course, be pro-rata for a part year worked. For the avoidance of doubt a week's leave should be regarded as equivalent to the time an employee would normally work in a week. Employees paid within the salary range Scale 5-6 are to receive a paid annual leave entitlement of twenty-two (22) days and employees in the range SO1 and above twenty-four (24) days.

The Regulations do not give any statutory entitlement to bank and public holidays in addition to annual leave. Therefore, if a temporary worker's conditions of service specifically exclude any entitlement to paid bank and public holidays then one option for the employing service is to treat them as annual leave and pay the worker accordingly. They would then, of course, count against the worker's annual leave entitlement.

If the operational requirements of the service are such that it is necessary for workers to take any or all of their paid annual leave entitlement at specified times then it is permissible for services to insist upon this provided the employee has been given prior notice to this effect. Such notification should preferably be given to the worker prior to them taking up their duties. If this is not possible, for whatever reason, then the period of notice should be at least twice the period of the leave to be taken, eg if the particular service to the public is scheduled to close down for two (2) weeks over the Christmas and New Year period then any worker who is required to take annual leave for some or all of the close down period must be notified to that effect at least four (4) clear working weeks before the event.

## **PARENTAL CARE LEAVE**

This policy applies to all Council Employees:

- Chief Officers have delegated authority to grant, at their discretion, up to six (6) weeks unpaid leave to an employee in any calendar year (ie 1/1 to 31/12) for reasons concerning the parental care of a child and/or to deal with incidents involving a dependant.
- For this purpose a week's leave should be regarded as equivalent to the time an employee would normally work in a week.
- The unpaid leave may be approved in any combination of hours, days or weeks.
- Any application for unpaid leave in excess of the annual six (6) weeks limit should be the subject of consultation with the employing service as much notice should be given as is reasonably practical, in writing, in advance of the period of absence being requested.
- Employees necessarily taking time off during working hours to deal with a short term emergency situation involving a dependant may, because of the circumstances, be unable to give any advance notice of their absence. However, it is incumbent upon the employee to advise the Chief Officer of the reason for and the likely duration of the absence as soon as is reasonably practicable.

In the unlikely event of any perceived abuse of the scheme the Chief Officer in consultation with the Corporate Lead for HR will have the discretion to limit the parental leave taken by an employee to not less than the equivalent of thirteen (13) weeks during the period of:-

- (i) the first five years of the child's life
- (ii) up to five years after a child is placed for adoption or until the child is eighteen (18) years of age, whichever is the earliest
- (iii) up until the child's eighteenth (18) birthday in the case of a disabled child.

(NB: A disabled child is a child for which disability living allowance is awarded)



## **FLEXIBLE WORKING – THE RIGHT TO REQUEST AND THE DUTY TO CONSIDER**

### **NOTES FOR GUIDANCE**

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## **INTRODUCTION**

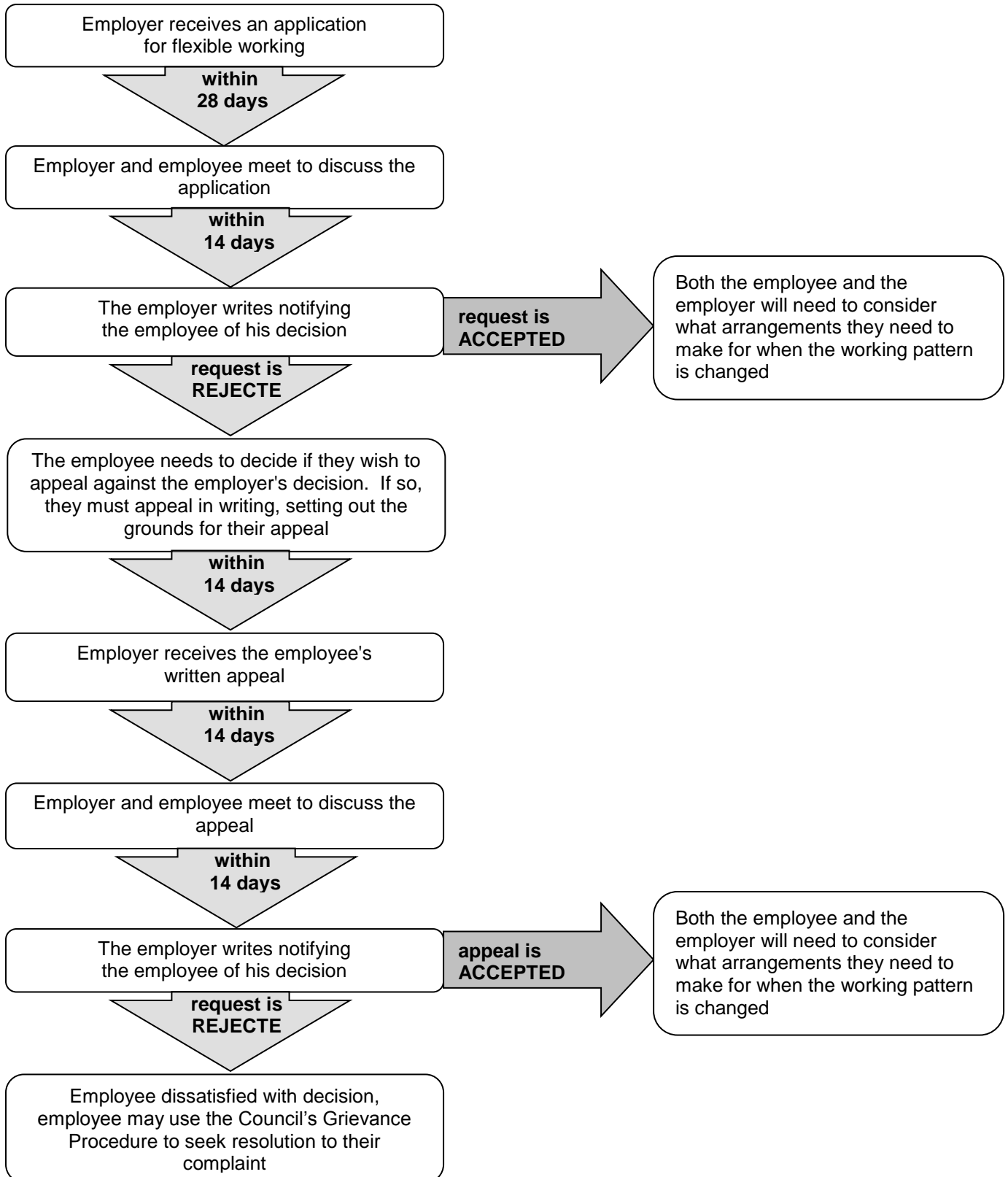
Parents of children aged 16 or under, or disabled children under the age of eighteen and carers of certain adults have the legal right to apply to their employer to work more flexibly.

Employees who have children aged 16 and under or disabled children under 18 years have the right to request a flexible pattern of working. The Work and Families Act 2006, s.12 widens the scope of the right to request flexible working under the 2002 Regulations to include persons who have caring responsibilities to adults. This is effective from 6 April 2007. On 6 April 2009, the right was extended further by the Flexible Working (Eligibility Complaints and Remedies) (Amendment) Regulations 2009 (SI 2009/595), to employees with responsibility for a child under the age of 17. This is effective from 6 April 2009. The right supplements existing Flexible Working Practices, Job Share and Part-Time Working already available to Council employees to help balance work and private life commitments. Heads of Service must carefully consider applications to work flexibly in their Service.

## FLEXIBLE WORKING – THE RIGHT TO REQUEST AND THE DUTY TO CONSIDER

### Summary flowchart of process

#### How does the process work?



## 2. **RIGHTS AND RESPONSIBILITIES**

### **Employees' rights**

- To apply to work flexibly.
- To have their application considered properly in accordance with the set procedure and refused only where there is a clear business ground for doing so.
- To have a companion when meeting the employer to discuss the application.
- Where an application is refused to have a written explanation explaining why.
- To appeal against the employer's decision to refuse an application.
- To take a complaint to a tribunal in certain circumstances.
- To be protected from detriment or dismissal for making an application under the right.

### **Employees' responsibilities and best practice**

- To provide a carefully thought-out application.
- To ensure their application is valid by checking that all the eligibility criteria are met and that they have provided all the necessary information.
- To ensure the application is made well in advance of when they want it to take effect.
- To arrive at meetings on time and to be prepared to discuss their application in an open and constructive manner.
- If necessary, be prepared to be flexible themselves, to reach an agreement with the employer.

### **Employers' rights**

- To reject an application when the desired working pattern cannot be accommodated within the needs of the business.
- To seek the employee's agreement to extend timescales where it is appropriate.
- To consider an application withdrawn in certain circumstances.

### **Employers' responsibilities and best practice**

- To consider requests properly in accordance with the set procedure.
- To ensure they adhere to the time limits contained within the procedure.
- To provide the employee with appropriate support and information during the course of the application.
- To decline a request only where there is a recognised business ground and to explain to the employee in writing why it applies.
- To ensure that any variation with the procedure is agreed in advance with the employee and recorded in writing.
- To ensure that they do not subject an employee to detriment or dismissal for making an application under the right.

### **3. ELIGIBILITY**

To make an application under the statutory right employees have to meet certain criteria:

#### **Eligibility checklist**

To be eligible to make a request under this right, a person must:

##### **General**

- Be an employee of the Council.
- Have worked for their employer continuously for 26 weeks at the date the application is made.
- Not be an agency worker or a member of the armed forces.
- Not have made another application to work flexibly under the right during the past 12 months.

##### **Parent**

- Be the parent of a child aged 16 or under, or under eighteen where disabled.
- Have responsibility for the upbringing of the child and be making the application to enable them to care for the child.

### **Under what circumstances can an application be made:**

Under the legislation, an application can be made only in order to help the employee to care for either a child or an adult who requires it. This may cover a range of circumstances. For example, it may enable the employee to spend more time with their children or it may help an employee to continue caring for an adult at the point where a professional care worker's day's work finishes. Under the legislation, applications cannot be made for any purpose other than caring for a child or for an adult in need of care.

### **Which parents can make requests under the right:**

Both mothers and fathers, whether they are the biological parents or legal guardians, can make applications, as can adoptive and foster parents. Spouses or partners of these individuals are also eligible, including partners of the same sex as long as they have or expect to have responsibility for the upbringing of the child.

### **What are the age limits of the child:**

The employee's child must be aged 16 and under, or under eighteen where the child is disabled, for the employee to be eligible to make an application. The parent will be able to make a request to work flexibly up until their child's sixteenth or, if disabled, eighteenth birthday.

### **Which carers of adults can make requests under the right:**

Carers who care, or expect to be caring, for a spouse, partner, civil partner or relative or who live at the same address as the person being cared for can make applications. A relative for this purpose is a mother, father, adopter, guardian, special guardian, parent-in-law, son, son-in-law, daughter, daughter-in-law, brother, brother-in-law, sister, sister-in-law, uncle, aunt or grandparent. Step-relatives and half blood relatives are also included (see "Definitions" below).

### **Definitions**

- 'Adopter' is someone who has been matched with the child for adoption;
- 'Agency worker' means any person who is supplied by a person ('the agent') to do work for another ('the principal') under a contract or other arrangement between the agent and the principal;
- 'Employee' means an individual who has entered into or works under a contract of employment;
- 'Disabled child' means a child who is entitled to a disability living allowance within the meaning of Section 71 of the Social Security Contributions and Benefits Act 1992;
- 'Employer' means the person by whom an employee is employed;

- 'Foster parent' means a foster parent within the meaning of Regulation 2(1) of the Fostering Servicing Regulations 2002 or Section 2(1) of the Fostering of Children (Scotland) Regulations 1996;
- 'Guardian' means a person appointed as a guardian under Section 5 of the Children Act 1989 or Sections 7 and 11 of the Children (Scotland) Act 1995;
- 'Special guardian' means a person appointed as a special guardian under Section 14A of the Children Act 1989 (this applies only in England and Wales).
- 'Partner' means the other member of a couple consisting of a man and woman who are not married to each other but are living together as if they were husband and wife; or two people of the same sex who are not civil partners, but are living together as if they were civil partners.
- 'Relative' means mother, father, adopter, guardian, special guardian, parent-in-law, son, son-in-law, daughter, daughter-in-law, brother, brother-in-law, sister, sister-in-law, uncle, aunt or grandparent and step-parent, step-son, step-daughter, step-brother and step-sister. Half-blood relatives are also included, as are adoptive relationships and relationships which would have existed but for an adoption, ie an employee's natural relatives.

#### **How often can an application be made:**

One application every 12 months can be made under the right. This is regardless of whether a previous application was made in respect of a different caring responsibility, ie an employee wishing to make a request to care for an adult would still have to wait a year even if their previous request had been to enable them to care for a child. Each year runs from the date when the application was made. Before making a subsequent application under the flexible working legislation, employees should bear in mind that they would still need to meet the eligibility criteria at the time of their subsequent application, ie be caring for a child aged 16 or under (or 18 if the child is disabled) or for an adult covered under the legislation.

#### **4. WHAT KIND OF CHANGES CAN BE APPLIED FOR**

There is scope to apply for a wide variety of different types of working pattern. Eligible employees can make a request to:

- change the hours they work;
- change the times when they are required to work; or
- work from home (whether for all or part of the week).

A request may be as simple as asking to start half an hour later than usual to allow an employee to drop their child off at school. Or it may be a bigger change to their hours in order to better fit their work with their childcare requirements/caring responsibilities to adults.

Flexible working actually incorporates a wide variety of working practices. A flexible working arrangement can be any working pattern other than the normal working pattern in an organisation, and can include: annualised hours, compressed hours, flexitime, homeworking, job sharing, shift working, staggered hours, term-time working.

## 5. **MAKING AN APPLICATION**

The main opportunity for the employee to set out their desired working pattern and reasons for why it can be implemented is through their application when making a request. The initial onus is therefore on the employee to provide a written application to their Head of Service well in advance of when the change is to take effect.

Certain information has to be included for an application to be valid.

Attached, Appendix A, Form CFW(A) Flexible Working Application Form should be used to make a request. Completion of Form CFW (A) will help the employee to ensure that all the necessary information is provided to Heads of Service and avoids any delay.

Irrespective of how an application is made, the following table lists all the points that must be covered in the application in order for it to be valid and considered by the Head of Service.

### **Application checklist**

#### **An application under the statutory procedure must:**

- Be in writing (whether on paper, email or fax).
- State the application is being made under the statutory right to request a flexible working pattern.
- Confirm the employee has or expects to have responsibility either for the upbringing of the child and is either: the mother, father, adopter, guardian, special guardian or foster parent; or, married to or the partner of the child's mother, father, adopter, guardian, special guardian or foster parent;

or

- for caring for an adult and is the spouse, partner, civil partner or relative of that adult or is not the spouse, partner, civil partner or a relative but lives at the same address as that adult.
- Explain what effect, if any, the employee thinks the proposed change would have on the employer and how, in their opinion, any such effect might be dealt with.



- Specify the flexible working pattern applied for.
- State the date on which it is proposed the change should become effective.
- State whether a previous application has been made to their Head of Service and, if so when it was made.
- Be dated.

#### NOTE

The written application must state the date when the employee would like the new working pattern to start. The proposed date should allow time for the application to be considered and implemented. There is no set time limit but an employee can expect it to take around fourteen weeks or longer if a problem arises.

Employees making their request to care for a child, must also state their relationship to their child, eg they are the adoptive father of a child aged 16 or under and should confirm that they have responsibility for their upbringing; or, for the carer of an adult, state their relationship to that adult. They must also state if and when any previous application was made.

#### **What types of care are relevant:**

Carers' patterns of care-giving will vary considerably from individual to individual, both in the nature and the extent of the care given. The sort of care-giving activities that carers of adults who request flexible working are likely to be involved in to a greater or lesser extent include:

- Help with personal care (eg dressing, bathing, toileting);
- Help with mobility (eg walking, getting in and out of bed);
- Nursing tasks (eg daily blood checking; changing dressings);
- Giving/supervising medicines;
- Escorting to appointments (eg General Practitioner (GP), hospital, chiropodist);
- Supervision of the person being looked after;
- Emotional support;
- Keeping the care recipient company;
- Practical household tasks (eg preparing meals, doing shopping, domestic labour);
- Help with financial matters or paperwork.

This is not an exhaustive list: some activities feature more prominently for some groups of carers than others. Carers of older people, for example, may need to ensure proper eating, while carers of people with mental health problems may need to order and supervise medication. Carers of people who have mental problems and who are in paid work may also need to help the person they care for with routine tasks such as getting to work.

6. **WILL THE CHANGE OF WORKING PATTERN BE PERMANENT**

A request that is made and accepted under the statutory right will normally be a permanent change to the employee's contractual terms and conditions. Employees have no right to revert back to their previous working pattern (unless otherwise agreed). As an example, if an employee's new flexible working pattern involves working reduced hours, employees have no right to revert to working the hours he or she previously worked.

7. **CONSIDERING AN APPLICATION**

The right places a legal duty on employers (Head of Service) to consider all applications and establish whether the desired work pattern can be accommodated within the needs of their Service. It may be possible for Head of Service to agree to a request to work flexibly simply on the basis of the application itself, and if this is the case the employee should be written to within 28 days, specifying the contract variation agreed to and the start date. But, where this is not possible, there is a set procedure to be followed. A flowchart summarising the procedure (How does the process work?) is included with this guidance (refer to page 65).

**The Meeting**

- Head of Service must hold a meeting to consider an employees request within 28 days after the date an application is received.
- If it is difficult to arrange a meeting within 28 days after the application was made at a time and place convenient to both parties, then Heads of Service should seek the employee's agreement to extend the period. Attached, Appendix B, Form CFW(B) Flexible Working Extension of Time Limit Form.
- The meeting will provide both Head of Service and employee the opportunity to discuss the desired work pattern in depth and consider how it might be accommodated. Both Head of Service and the employee should be prepared to be flexible. If the requested working pattern cannot be accommodated, the meeting also provides an opportunity to see if an alternative working arrangement may be appropriate. It may also be in both parties interests to agree at this stage that the new working pattern will take place for an agreed trial period, eg 12 weeks in order to see how it will suit both parties. In this case, both parties could agree to extend the time for a final decision to be given in respect of the request. To do so, Heads of Service should specify the period of extension and its end date in writing to the employee. Heads of Service can then make a final decision once the new pattern has been tried out.
- An employee can, if they wish be accompanied at the meeting by another Council employee (a colleague or trade union representative employed by Calderdale Council).

- If an employee is unable to attend the meeting without notification, they should contact their Head of Service to explain their absence, and a further meeting can be arranged at a mutually convenient time. If an employee fails to attend a meeting more than once and does not provide a reasonable explanation then the application can be treated as having been withdrawn. If this is the case Head of Service should write to the employee confirming that the application is now considered withdrawn.
- Head of Service must write to their employee informing them of their decision within 14 days after the date of the meeting.

### **The Companion**

- An employee has the right to bring a companion to the meeting.
- The companion must be an employee of the Council.
- The role of the companion is to support the employee. The companion is able to address the meeting, and to confer with the employee during it.
- The companion is not allowed to answer questions on the employee's behalf.
- If the companion is unable to attend the meeting, the employee should re-arrange the meeting for a date within seven days of the originally proposed time, ensuring the new time is convenient to all parties; or, consider an alternative companion.

### **NOTE**

Heads of Service must allow employees to take time off with pay during working hours to act as a companion.

## **8. HOW SHOULD AN APPLICATION BE SUBMITTED AND RECEIVED**

An application will be considered to have been made on the day that it is received by the Head of Service. For applications sent by email or fax this is taken to be the day of transmission. For applications sent by post it means the day on which it would have been delivered in the ordinary course of post, unless shown to be otherwise.

### **How should an application be acknowledged**

Heads of Service must acknowledge receipt of the employee's request. Refer to Appendix A, Form CFW(A). There is an acknowledgement slip provided on the bottom of Form CFW(A) for Heads of Service to complete to confirm receipt of an employee's application.

### **What happens if an application is incomplete**

If an employee fails to provide all the required information as set out in Section 5 - Making an Application, Head of Service should inform the employee what they have omitted and ask them to re-submit the application when complete. Head of Service must also inform the employee that they are not obliged to consider the application until it is complete and re-submitted.

If an employee unreasonably refuses to provide the employer with the information needed to assess whether the change should be agreed to, for example, the employee has not described the desired future working pattern, the employer will be entitled to treat the application as withdrawn. The employee would not then be able to make another application under the statutory procedure for a further 12 months.

## **9. CONSIDERING A REQUEST - REACHING A DECISION**

Once the request has been discussed, Heads of Service must notify the employee of the decision in writing. Notification must take place within 14 days following the date of the meeting.

### **If a request is accepted, the notification must:**

- Include a description of the new working pattern.
- State the date from which the new working pattern is to take effect.
- Be dated.

### **If a request is rejected, the notification must:**

- State the business ground(s) for refusing the application.
- Provide a sufficient explanation as to why the business ground(s) for refusal applies in the circumstances.
- Provide details of the employee's right to appeal.
- Be dated.

## **10. HOW SHOULD AN APPLICATION BE ACCEPTED**

When accepting a request, Head of Service must write to their employee (Attached, Appendix C Form CFW(C), Flexible Working Application Acceptance Form).

- detailing the new working pattern;
- stating the date on which it will start; and
- ensure the notice is dated.

The agreed new working pattern will be a permanent change to the employee's terms and conditions of employment, unless agreed otherwise.

Where a trial period or time limited period has been agreed this should also be stated in the written acceptance letter (refer to The Meeting, Bullet Point 3, Trial Period).

11. **EXTENSION OF TIME LIMITS - THROUGH AGREEMENT BY THE EMPLOYER AND THE EMPLOYEE**

If Heads of Service need more time to come to a decision, they must obtain the agreement of their employee for an extension to the 14 days in which to inform them of the decision following the meeting (Attached, Appendix B Form CFW(B) Flexible Working Extension of Time Limit Form).

In these circumstances the proposal for an extension is likely to be in the employee's interests and employees should be open to such requests, eg it may be that a Head of Service requires extra time to speak to another employee, who is on holiday, about whether they could work the hours left uncovered by the employee's requested working pattern. Or the employee themselves may be going on leave and as such will not be able to attend a meeting within the time limit. Such extensions of time limits can only take place if they are agreed.

Heads of Service must make a written record of the agreement to an extension.

The written record of the agreement must:

- Specify what period the extension relates to;
- Specify the date on which the extension is to end;
- Be dated; and
- Sent to the employee.

12. **EXTENSION OF TIME LIMITS - THROUGH THE EMPLOYER'S ABSENCE**

If an application is sent to a Head of Service and the Head of Service is absent from work due to leave or illness, an automatic extension applies. The period then that the Head of Service has to arrange the meeting will commence either on the day of their return or 28 days after the application is made, whichever is sooner. On the Head of Service's return it is advisable to acknowledge receipt of the application so the employee is aware that the extension has applied and the period when they can expect to meet with the relevant manager to discuss their request.

There are no other circumstances where an automatic extension to any period applies.

13. **THE EMPLOYEE DECIDES TO WITHDRAW THE APPLICATION**

An employee who withdraws their application will not be eligible to make another application for 12 months from the date their application was made. If

an employee decides to withdraw their application, they should notify their Head of Service as soon as possible and in writing. Attached, Appendix D, Form CFW(D) Flexible Working Notice of Withdrawal Form

If a Head of Service is informed verbally that the application is withdrawn, but does not subsequently receive written confirmation, the employee should be contacted to confirm their intentions. If written confirmation is not received from the employee, Heads of Service should confirm the withdrawal in writing.

14. **THE EMPLOYEE FAILS TO ATTEND TWO MEETINGS**

In cases where an employee misses two meetings without reasonable cause, Heads of Service may treat the application as withdrawn. It is therefore in the employee's best interests to inform their Head of Service as soon as possible if and why they are not able to attend a meeting.

15. **HOW SHOULD AN APPLICATION BE DECLINED**

There will always be circumstances where, due to the needs of their Service Area, Heads of Service will decide that they are unable to accept a request. In all such circumstances Heads of Service must supply the following details in writing to the employee:

- state the business ground(s) why the request cannot be accepted;
- provide an explanation of why the business reasons apply in the circumstances;
- set out the appeal procedure; and
- ensure the written notice is dated.

Attached, Appendix E Form CFW(E): Flexible Working Application Rejection Form.

**What is a business ground**

An application can be refused only where there is a clear business reason. The business ground(s) for refusing an application must be from one of those listed below:

**Business grounds for refusing a request**

- Burden of additional costs
- Detrimental effect on ability to meet customer demand.
- Inability to reorganise work among existing staff.
- Inability to recruit additional staff.
- Detrimental impact on quality.

- Detrimental impact on performance.
- Insufficiency of work during the periods the employee proposes to work.
- Planned structural changes.

In addition to providing a specific business ground, Heads of Service must include an explanation about why the business ground applies in the circumstances in relation to their Service. The explanation should include the key facts about why the business ground applies. An explanation of around two paragraphs will hopefully be sufficient, although the actual length of explanation necessary to demonstrate why the business ground applies will differ depending on each individual case. The aim is for Heads of Service to explain to employees in terms that are relevant, why the requested working pattern cannot be accepted as a result of the business ground applying in the circumstances. If the reasons given do not look convincing to the Head of Service it is unlikely to look convincing to the employee.

Any facts quoted in the explanation must be accurate. It is not a necessity for Heads of Service to provide the detail in the explanation, but they should ensure that they are able to look up any facts should they be subsequently disputed. A decision based on incorrect facts to reject an application would provide an employee with a basis to make a complaint to an employment tribunal.

## 16. **APPEALING THE DECISION - APPEAL MEETING**

On occasions employees may believe that their request has not been properly considered and may wish to appeal.

The appeal procedure is as follows:

### **Appealing the decision:**

- An employee has 14 days to appeal in writing after the date of notification of the Head of Service's decision. Attached, Appendix F Form CFW(F) Flexible Working Appeal Form.
- If it is difficult to arrange the appeal meeting within 14 days, then Heads of Service should seek the employee's agreement to extend the period. Attached, Appendix B Form CFW(B) Flexible Working Extension of Time Limit Form.
- If an appeal is made, Heads of Service must arrange an appeal meeting to take place within 14 days after receiving notice of the appeal.
- The employee can be accompanied.
- Heads of Service must inform the employee of the outcome of the appeal in writing within 14 days after the date of the meeting.

An employee must make their appeal in writing within 14 days after the date they receive written notice that their request has been rejected. When appealing against a refused request an employee will have to set out the grounds for making the appeal and ensure that it is dated.

There are no constraints on the grounds under which an employee can appeal. It may be that they wish to bring to the attention of their Head of Service something the Head of Service may not have been aware of when they rejected the application, eg that another member of staff is now willing to cover the hours the applicant no longer wishes to work. Or it may be to challenge a fact the Head of Service has quoted to explain why the business reason applies.

Heads of Service must arrange the appeal meeting within 14 days after receiving notification that the employee wishes to appeal. The employee can be accompanied by one companion. This is on the same basis as the meeting to discuss the original request and detailed in Section 7. There are no restrictions on who should hold the appeal meeting but it is advisable to have a manager senior to the one who originally considered the application to hear the appeal.

The circumstances where the employee misses the appeal meeting should be handled in the same way as for an employee who misses the meeting to discuss the application (refer to bullet point 5 - The Meeting - page 61).

Heads of Service must inform the employee of the outcome of the appeal in writing within 14 days after the date of the meeting. If this is difficult to do within the 14 days then Heads of Service should seek the employee's agreement to extend the period. Attached, Appendix B Form CFW(B) Flexible Working Extension of Time Limit Form.

If the appeal is upheld the written decision must (Attached, Appendix G, Form CFW(G) Flexible Working Appeal Reply Form):

- include a description of the new working pattern;
- state the date from which the new working pattern is to take effect; and
- be dated.

If the appeal is dismissed the written decision must:

- state the grounds for the decision. These will be appropriate to the employee's own grounds for making the appeal;
- provide an explanation as to why the grounds for refusal apply in the circumstances. The same principles apply as to what is a sufficient level of explanation at appeal as the amount of explanation that should be given following the initial decision; and
- be dated.



A written notice of the appeal outcome constitutes the employer's final decision and is effectively the end of the formal procedure within the workplace.

## 17. **UNRESOLVED APPLICATIONS**

Most applications will conclude with a satisfactory outcome on the Head of Service's initial decision or at appeal. But there will always be some cases, even after an appeal, where an employee feels their application has not been dealt with to their satisfaction. The employee may want to involve a third party or be thinking of making a complaint to an employment tribunal.

The following are the options available:

### **How to deal with an unresolved application**

- Through an informal discussion.
- The employer's grievance procedure.
- Third party involvement, eg an Acas official, union representative.
- In specific circumstances, making a formal complaint to the Acas Arbitration Scheme or an Employment Tribunal.

### **Speak to the employer informally**

Heads of Service are advised in the first instance to try to resolve any problems with the employee.

It may be that there has been a simple misunderstanding of the procedure, which the employee believes affected the decision. If the employee feels able to discuss this with the manager, the issue may be resolved without the need to resort to more formal mechanisms. For example, where a time limit has not been met in the first instance it may be far more effective to speak to the relevant manager and inform them that they need to reply as soon as possible due to their breach, rather than seek to pursue the matter to an employment tribunal.

### **Grievance procedure**

If the problem is not resolved through the informal process then the employee may use the Council's Grievance Procedure to seek resolution to their complaint.

### **External parties providing the remedy**

If a dispute cannot be resolved between the parties, the case can be heard by an external body who provide the remedy to the disagreement: either an employment tribunal or through the Acas Arbitration Scheme.

### **In what circumstances can a formal complaint be made**

An employee may make a complaint to an employment tribunal or Acas arbitration where:

- the employer has failed to follow the procedure properly; or
- the decision by the employer to reject an application was based on incorrect facts.

An employee has no right to make a complaint where they simply disagree with the business grounds provided by the employer for declining a request. The employment tribunal/Acas binding arbitration does not have powers to question the employer's business reasons, although it can examine the facts on which the business reason is based to see if they are factually correct.

A breach of the procedure may, for example, be a failure to hold the meeting to discuss the application within the timescale (where no extension has been agreed) or where the employer fails to provide all the necessary information in their notice to the employee of their decision. Missing a deadline as laid out in the procedure by one day will technically constitute a breach, although in the vast majority of cases where this is simply an accident the problem should be resolved at the workplace.

Equally, it is important that the employer ensures that facts provided to explain why a business ground applies are correct. While a tribunal or arbitrator has no power to question the employer's actual business grounds for declining a request, any rejection based on incorrect facts will provide a basis for making a complaint. Where an employee suspects that a fact is incorrect they must first raise this at appeal. For example, an employee may appeal by arguing against the employer's grounds that there is no one else to provide cover in their absence, which if not addressed by the employer at appeal could be a basis for making a complaint to a tribunal or arbitrator. Apart from breaches of procedure relating to the failure to meet deadlines in respect of the meeting to discuss the application or the appeal hearing; or to give notice correctly of the decision on the application or on appeal, the employee cannot make a complaint to an employment tribunal unless they have received notification that their application has been rejected on appeal.

### **Remedies and compensation**

An employment tribunal or Acas binding arbitration, which finds in favour of the employee, will be able to order the employer to:

- reconsider an application by following the procedure correctly; and/or
- pay an award to the employee.

The level of compensation will be an amount that Acas or the employment tribunal feels to be just and equitable in all the circumstances, limited to a maximum amount. The maximum level is eight weeks' pay. The week's pay itself will be limited to the maximum provided under Section 227 of the Employment Rights Act 1996. This amount is reviewed annually.

In addition, where an employer is found to have prevented the employee from being accompanied either at the meeting to discuss the application or appeal meeting they may make a separate award of up to two weeks' pay. Again, the week's pay is capped, as set out above.

**CALDERDALE COUNCIL**

**THE RIGHT TO REQUEST FLEXIBLE WORKING**  
**FORM CFW (A): FLEXIBLE WORKING APPLICATION FORM**

**Note to the employee**

Please use this form to make an application to work flexibly under the right provided in law to help eligible employees care for their children or for an adult.

It will help your Head of Service to consider your request if you provide as much information as you can about your desired working pattern. It is important that you complete all the questions as otherwise your application may not be valid. When completing sections 3 and 4, think about what effect your change in working pattern will have both on the work that you do and on your colleagues. Once you have completed the form, you should immediately forward it to your Head of Service. Your Head of Service will then have 28 days after the day your application is received in which to arrange a meeting with you to discuss your request. If the request is granted, this will normally be a permanent change to your terms and conditions unless otherwise agreed.

**Note to Head of Service**

This is a formal application made under the legal right to apply for flexible working and Heads of Service have a legal duty to consider applications seriously. You have 28 days after the day you receive this application in which to either agree to the request or arrange a meeting with your employee to discuss their request.

Please confirm receipt of this application using the attached confirmation slip.

**Name of Employee (IN BLOCK CAPITALS)**

**Directorate/Section**

**Request to Head of Service**

I would like to apply to work a flexible working pattern that is different to my current working pattern under my right provided under section 80F of the Employment Rights Act 1996. I confirm I meet each of the eligibility criteria as follows:

**Either**

- I have responsibility for the upbringing of either
  - [ ] a child aged 16 or under
  - [ ] a disabled child under 18.
- I am:
  - The mother, father, adopter, guardian, special guardian or foster parent of the child; or
  - Married to, or the partner or civil partner of, the child's mother, father, adopter, guardian, special guardian or foster parent.
- I am making this request to help me care for the child.

Or

- I am, or expect to be, caring for an adult.
- I am:
  - The spouse, partner, civil partner or relative of the adult in need of care;
  - Or
  - Not the spouse, partner, civil partner or relative of that adult, but live at the same address.
- I am making this request to help me care for the adult in need of care.

- I have worked continuously as an employee of the company for the last 26 weeks.
- I have not made a request to work flexibly under this right during the past 12 months.

Date of any previous request to work flexibly under this right:

If you are not sure whether you meet any of the criteria, information can be found in the **Eligibility** section of the Flexible Working Notes for Guidance.

If you are unable to tick all of the relevant boxes then you do not qualify to make a request to work flexibly under the statutory procedure.

**1a. Describe your current working pattern (days/hours/times worked):**

**1b. Describe the working pattern you would like to work in future (days/hours/times worked):**

**1c. I would like this working pattern to commence from:**

Date:

**2. Impact of the new working pattern**

I think this change in my working pattern will affect my employer and colleagues as follows:

**3. Accommodating the new working pattern**

I think the effect on my employer and colleagues can be dealt with as follows:

**Employee Signature:**

**Date:**

**NOW PASS THIS APPLICATION TO YOUR HEAD OF SERVICE**



-----

*Cut this slip off and return it to your employee in order to confirm your receipt of their application*

**Head of Service's Confirmation of Receipt** (to be completed and returned to employee)

**Dear:**

I confirm that I received your request to change your work pattern on:

**Date:**

I shall be arranging a meeting to discuss your application within 28 days following this date. In the meantime, you might wish to consider whether you would like to be accompanied at the meeting by another Council employee (a colleague or trade union representative employed by Calderdale Council).

**Name (IN BLOCK CAPITALS)**

**Head of Service Signature**

**Date:**

**CALDERDALE COUNCIL**

**FORM CFW (B): FLEXIBLE WORKING EXTENSION OF TIME LIMIT FORM**

**Note to Head of Service**

This form is provided for you to complete when confirming agreement with your employee that you wish to extend a time limit for part of the procedure. You may extend the time limit for any part of the process, providing your employee agrees to the extension.

**Name of Employee (IN BLOCK CAPITALS)**

**Directorate/Section**

Dear

I wish to extend the amount of time that the regulations allow me to:

- Arrange a meeting to discuss your application (28 days)
- Notify you of my decision regarding your application (14 days)
- Arrange a meeting to discuss your appeal (14 days)
- Notify you of my decision regarding your appeal (14 days)

I wish to extend the time limit to ..... days. This means that I will have until (*date*) to complete the necessary action. I need the extra time for the following reason:

If you agree to this extension, please complete the slip below and return it to me.

**Name (IN BLOCK CAPITALS)**

**Head of Service Signature**

**Date:**

**NOW PASS THIS APPLICATION TO YOUR EMPLOYEE**

**Note to the employee**

To allow proper consideration of your request, your Head of Service may wish to extend the permitted time limit for any part of the process. Your Head of Service will need your agreement to any extension of the time limit. If you agree to the above request, please complete the agreement slip below and return it to your Head of Service.

**Cut this slip off and return it to your Head of Service in order to confirm your acceptance of their request**



**Employee's Agreement to Time Extension**

**Name of Employee (IN BLOCK CAPITALS)**

**Directorate/Section**

I accept your request to extend the amount of time to: *(insert date)*

**Employee Signature**

**Date**



**CALDERDALE COUNCIL**  
**FORM CFW (C): FLEXIBLE WORKING APPLICATION ACCEPTANCE FORM**

**Note to Head of Service**

You must write to your employee within 14 days following the meeting with your decision. This form can be completed when accepting an application to work flexibly. If you cannot accommodate the requested working pattern you may still wish to explore alternatives to find a working pattern suitable to you both

Please note that Form CFW(E): Flexible Working Application Rejection Form should be used if the employee's working pattern cannot be changed, and no other suitable alternatives can be found .

**Name of Employee (IN BLOCK CAPITALS)**

**Directorate/Section**

Dear

Following receipt of your application and our meeting on: (date)  
I have considered your request for a new flexible working pattern.

- ☐ I am pleased to confirm that I am able to accommodate your application.
- ☐ I am unable to accommodate your original request. However, I am able to offer the alternative pattern which we have discussed and you agreed would be suitable to you.

Your new working pattern will be as follows:

Your new working pattern will begin from: (date)

**Note to the employee**

Please note that the change in your working pattern will normally be a permanent change to your terms and conditions of employment and you have no right in law to revert to your previous working pattern, unless otherwise agreed.

If you have any questions on the information provided on this form, please contact me to discuss them as soon as possible.

**Name (IN BLOCK CAPITALS)**

**Head of Service Signature**

**Date:**

**NOW RETURN THIS FORM TO YOUR EMPLOYEE**

**CALDERDALE COUNCIL**  
**FORM CFW (D): FLEXIBLE WORKING NOTICE OF WITHDRAWAL FORM**

**Note to the employee**

This form provides notification to your Head of Service that you wish to withdraw your application to work flexibly. Once you have withdrawn your application, you will not be able to make another application until 12 months from the date your original application was made.

**To:** Head of Service (insert name)

**Directorate/Section**

I wish to withdraw my application to work flexibly which I submitted to you on: (date)

I understand that I will not be able to make another application until twelve months after the above date.

**Name of Employee (IN BLOCK CAPITALS)**

**Employee signature**

**Directorate/Section**

**Date:**

**NOW RETURN THIS FORM TO YOUR HEAD OF SERVICE**

**Note to Head of Service**

Once your employee has completed this form and returned it to you, the application is considered as withdrawn and you are not required to give it any further consideration.

Please complete the slip below and return it to your employee to confirm your receipt of the withdrawal notice.



**Head of Service's Confirmation of Withdrawal** (to be completed and returned to employee)

Dear:

I confirm that I have received notice that you wish to withdraw your application for flexible working which you submitted to me on: (date).

Under the right to apply, you will not be eligible to submit another application until twelve months after the above date (insert date).

**Name (IN BLOCK CAPITALS)**

**Head of Service Signature**

**Date:**

**CALDERDALE COUNCIL**  
**FORM CFW (E): FLEXIBLE WORKING APPLICATION REJECTION FORM**

**Note to Head of Service**

You must write to your employee within 14 days following the meeting with your decision. This form can be completed by you when declining an application. Before completing this form you must ensure that full consideration has been given to the application. You must state the business ground(s) as to why you are unable to agree to a new working pattern and the reasons why the ground(s) applies in the circumstances.

**Name of Employee (IN BLOCK CAPITALS)**

**Directorate/Section**

Dear

Following receipt of your application and our meeting on: (date)

I have considered your request for a new flexible working pattern.

I am sorry but I am unable to accommodation your request for the following business ground(s):

The grounds apply in the circumstances because:

(You should explain why any other work patterns you may have discussed at the meeting are also inappropriate. Please continue on a blank sheet if necessary).

**Name (IN BLOCK CAPITALS)**

**Head of Service Signature**

**Date:**

If you are unhappy with the decision you may appeal against it. Details of the appeal procedure are set out below.

**The Appeal Process** - If your Head of Service has turned down your request for flexible working, you have the right to appeal against the decision. If you wish to appeal, you must write to your Head of Service setting out the grounds for your appeal, within 14 days after receiving written notice of his/her decision. Refer to Appendix F, Form CFW(F): Flexible Working Appeal Form.

**CALDERDALE COUNCIL**

**FORM CFW (F): FLEXIBLE WORKING APPEAL FORM**

**Note to the employee**

If your application has been refused, you may appeal against your Head of Service's decision. You can use this form to make your appeal. You should set out the grounds on which you are appealing, and do so within 14 days after the date you received written notice that your request had been rejected.

**Note to Head of Service**

This is a formal appeal made under the legal right to apply for flexible working. You have 14 days following your receipt of this form in which to arrange a meeting with your employee to discuss their appeal.

**To:** Head of Service (insert name)

**Directorate/Section**

I wish to appeal against your decision to refuse my application for flexible working. I am appealing on the following grounds:

(Please continue on a blank sheet if necessary)

**Name (IN BLOCK CAPITALS)**

**Employee signature**

**Directorate/Section**

**Date:**

**NOW RETURN THIS FORM TO YOUR EMPLOYER**

**CALDERDALE COUNCIL**  
**FORM CFW (G): FLEXIBLE WORKING APPEAL REPLY FORM**

**Note to Head of Service**

You may complete this form when replying to an appeal that an application to work flexibly has not been properly considered. You must return this form to your employee, giving notice of your decision, within 14 days after the meeting at which you both discussed the appeal. If you decide to turn down the appeal, you must state the grounds for your refusal.

**Name of Employee (IN BLOCK CAPITALS)**

**Directorate/Section**

**Dear:**

**Employee Number:**

**Date:**

**Following our meeting on:**

I have considered your appeal against the decision to refuse your application to work a flexible working pattern.

I accept your appeal against the decision. I am therefore able to accommodate your original request to change your working pattern as follows:

Your new working arrangements will begin from: (date)

**Note to the employee**

Please note that the change in your working pattern will be a permanent change to your terms and conditions of employment and you have no right in law to revert back to your previous working pattern, unless otherwise agreed.

I am sorry but I must reject your appeal for the following ground(s):

The ground(s) apply because:

(Please continue on a blank sheet if necessary)

**Name (IN BLOCK CAPITALS)**

**Head of Service signature**

**Date:**

**NOW RETURN THIS FORM TO YOUR EMPLOYEE**

## **REDUCTION IN HOURS POLICY**

- 1.1 It is the policy of the Council to consider an employee's request to reduce their hours. Where employees request a reduction of hours and it is accepted by the Council there is no entitlement to increase working hours. The new agreed contractual hours will take effect as soon as practicable, if the request is accepted.
- 1.2 You can use this form to make an application to reduce your working hours. You should submit your application to your Manager/Director well in advance of the date you wish the request to take effect. The decision is at the discretion of the Manager/Director. Appeals against supporting your request can be made to the Corporate Lead for HR within 5 working days of receiving the decision from the Manager/Director. No further appeal beyond the Corporate Lead for HR will be heard. Other policies cannot be used as part of this process.
- 1.3 It will help your Manager/Director to consider your request if you provide as much information as you can about your desired reduction in working hours. It is important that you complete all the questions as otherwise your application may not be valid. When completing this form, think about what effect your change in working pattern will have both on the work that you do and on your colleagues. Once you have completed the form, you should immediately send it to your Manager/Director (you might want to keep a copy for your own record).
- 1.4 This policy does not form part of any employee's contract of employment and it may be amended by the Council at any time following consultation with recognised Trade Unions.

### **To the Manager/Director**

**I would like to apply to work for reduced hours that are different to my current working pattern.**

Name. ....

Please give details of your request below:

Who/what else will be affected by this change?

How will they/it be affected?

How do you suggest this is dealt with?

### **Manager's/Director's decision**

I confirm that I received your request to reduce your hours of work and the request has been approved/not approved.

## **PROCEDURE FOR EMPLOYEES WHO ARE VOLUNTEER RESERVISTS –**

### **TERRITORIAL ARMY MEMBERS**

The main legislation relating to employers and the Volunteer Reserve Forces is the Reserve Forces (Safeguard of Employment) Act 1985 (SOE 85).

This Act has subsequently been amended by Section 122 of the Reserve Forces Act 1996 (RFA 96) and by Statutory Instrument 1998 no. 3086\*, Regulation 10 (4) and by [The Reserve Forces \(Payments to Employers and Partners\) Regulations 2014](#).

The Act, as amended, 1996 and 1998, provides two types of protection: protection of employment for those liable to be mobilised (s17), and reinstatement for those mobilised (s1). In certain circumstances, it also provides for compensation (within s8 to 11 and s18).

The Defence Reform Act 2014 (Commencement No 2) Order 2014 (SI 2014/2370) will bring section 48 of the Defence Reform Act 2014 into force, which removes the statutory qualifying period for unfair dismissal where the dismissal is connected with the employee's membership of the Reserve Forces. The order also brings into force section 46 and Schedule 7 of the Defence Reform Act 2014, which amend the Reserve Forces Act 1996 to make provision for payments to small and medium-sized employers of reservists who are called out for service. [The Reserve Forces \(Payments to Employers and Partners\) Regulations 2014](#) (SI 2014/2410) set out how these payments will be calculated.

Volunteer Reservists are not normally deployed in military operations on a regular or wholesale basis, except if an extreme situation arises. However, under the provisions of the Reserve Forces Act 1996, all members of the Volunteer Reserve Forces are committed to the possibility of mobilisation if required.

### **RESERVISTS RESPONSIBILITIES**

Volunteer Reservists have responsibilities towards the Council as their employer.

#### **They are responsible for:**

##### **Identifying themselves as a Volunteer Reservist**

With effect from 1 April 2004, anyone who joins the VRF, or seeks to re-engage, must give permission for the MOD to write to their employer directly. This new system called 'Employer Notification' is designed to ensure that the Council is aware that it has an employee in the VRF and that managers know about the associated benefits, rights and obligations.

Volunteer Reservists are responsible for providing correct information to their employers about their training commitments and any other issues that may arise.

##### **Asking for training leave**

It is up to individual reservists to make management aware of their basic training commitments and annual camp, and to ask for training leave when it arises. They are responsible for giving

as much notice as possible of any additional leave they will need and for representing this accurately.

Members of the Volunteer Reserve Forces (VRF) have a commitment to training once a week and on 30 other days through the year, made up of weekends and a 15-day continuous training period.



## Informing the Council of mobilisation

If a Volunteer Reservist seeks voluntary mobilisation, he or she is responsible for telling their Directorate, as management consent is required.

In the event of compulsory mobilisation, Volunteer Reservists are responsible for informing their manager of their mobilisation order as soon as practically possible. In their mobilisation pack, they should receive a letter addressed to their employer, which they are responsible for giving to their manager.

This letter will set out the date and possible duration of mobilisation, and the Council's statutory rights and obligations – including the entitlement to apply for an exemption or deferral from mobilisation under certain circumstances.

If there isn't a letter, the Volunteer Reservist is responsible for checking that the Council has been otherwise informed.

## Training leave

The Council has provision to grant paid leave of absence for training by Volunteer Reservist as follows:

Employees whose basic leave entitlement is 4 weeks – 2 weeks' paid leave of absence.

Employees with more than 4 weeks' leave either one or 2 weeks' paid leave at the Council's discretion. Employees required to undertake training additional to summer camp who are unable to arrange for such training on days when they would not normally be working – paid leave of absence recommended (maximum of 16 days per annum) by National Agreement.

## Mobilisation

If a Volunteer Reservist seeks **voluntary** mobilisation, the Director has to give consent before it can take place. An employer is not legally obliged to release the reservist.

In the case of **compulsory** mobilisation, the Council has no right to be given statutory warning period prior to an issue for mobilisation. However, the Armed Services aim to provide the employer and the volunteer reservist with at least 3 weeks' warning of the date they are required to report for mobilisation.

The situation is different for High Readiness Reserves (HRR) and Civil Contingency Reaction Forces (CCRF). The High Readiness Reserves are a special category of volunteer reservist, who should normally be available to report for service at a minimum of 7 days' notice. If an HRR has a regular job and works more than 2 hours per week, they will require management written consent to hold HRR status. This consent is renewed annually.

The Civil Contingency Reaction Forces, is a military rapid reaction force formed of volunteer reservists from all three services. The CCRF is intended for use in the aftermath of a major terrorist attack or catastrophic natural disaster in the United Kingdom. It will provide trained manpower to support the civil emergency services and local regular military forces, if they are unable to cope with the situation on their own. It can be called up at very short notice, this

may be as little as 24 hours, but it would only be mobilised for a short period of time, probably no more than a couple of weeks.

### **Employers right to seek exemption from mobilisation**

In the case of compulsory mobilisation, the Council has the right to seek exemption from, or deferral of, mobilisation if it is thought that the Volunteer Reservist's absence will cause serious harm to the business or a related business.

To obtain exemption or deferral, management must be able to show that the reservist's absence would cause serious harm to the Council's business or undertaking or to a partner, proprietor or employee of that business or undertaking.

The definition of serious harm may vary from case to case, but includes loss of sales, markets, reputation, goodwill or other financial harm; serious impairment of the ability to produce goods or provide services; and demonstrable harm to the research and development of new products, services or processes. In all cases, this relates to harm which cannot be addressed by the financial awards available to employers when Volunteer Reservist employees are mobilised.

Applications must be made within seven days of the Volunteer Reservist being served with a mobilisation notice. If the application is not made within those seven days, permission to make a late application must be obtained from the Adjudication Officer who is appointed by the Ministry of Defence (usually a serving officer or Civil Servant).

Employers need to provide as much information as possible about the reservist. As well as personal details such as name, address, payroll number and National Insurance number, they should provide information about the business, the role that the reservist performs, the effect that his or her absence will have if mobilised and the grounds for exemption or deferral in terms of serious harm to the business.

An employer dissatisfied with the Adjudication Officer's decision retains the right to appeal for a hearing by an independent Reserve Forces Appeal Tribunal through the Tribunals Secretary.

The Council as a large organisation would have difficulty in proving a case for exemption of their employee from mobilisation.

### **Length of mobilisation**

The maximum period of mobilisation depends on the power used under RFA 96 and on the scale and nature of the operation. A period of mobilisation contains three distinct phases: pre-deployment training dependent on the nature of the conflict, the operational tour itself and post-tour leave. The Services are moving towards the more flexible use of reservists, and operational tours currently range from short tours of three months or less, up to a maximum of twelve months in total.

## **Protection of employment**

If an employer terminates a person's employment without their consent, and does so solely or mainly by reason of a liability to be mobilised for military service, the employer is guilty of an offence. A Court can order the employer to pay compensation, as well as levying a fine.

## **Reinstatement**

The Council has a duty to reinstate the reservist to their former job for a stated minimum period or to offer the most favourable alternative employment once the reservist makes an application for re-instatement.

The reservist must write within the period between the demobilisation date and the third Monday after that date, asking for reinstatement to their former job giving the date on which they will be available to return to work.

If the Council offer other work, and the reservist is dissatisfied with the alternative offer, the Council must be informed immediately in writing, stating the reason(s) why there is reasonable cause not to accept the alternative offer made.

If the reservist believes the Council's response to that submission denies his/her rights, an application can be made to an Armed Forces Reinstatement Committee for assessment. The Reinstatement Committee considers the reservist's application and, if accepted, will make order (s8(2)) for reinstatement and/or compensation.

There is an appeal procedure against the decision of the Reinstatement Committee (s9) and, subject to any prescribed time limit, further appeal may be made to an Umpire.

## **FINANCIAL ASSISTANCE AND PENSION SCHEMES**

### **Employers Standard Award**

An employee's mobilisation may result in additional costs to the Council. Reserve Forces Regulations provide for three types of financial award, which Directorates can apply for irrespective of whether the Reservist has been compulsorily or voluntarily mobilised. In order to claim, appropriate supporting documentary evidence must be provided.

This award is made up of three elements:

1. Initial Replacement

This award is for actual net additional costs, within distinct limits, and covers the initial one-off costs such as advertising for, and interviewing, replacement staff. The upper limit is 6% of the employee's annual salary, or £2,400 (whichever is the least).

2. Ongoing Administration

This is for actual net additional recurring costs such as agency fees and overtime during the employee's military duty. The upper limit is set at 4% of the weekly rate of salary or £31 per week; whichever is the least, multiplied by the number of weeks of military duty.

3. Re-training Award

This award is intended to cover any re-training costs, incurred when the employee returns from mobilised military duty and is required to regain or renew any standards of competence or qualifications. The award will be based on actual expenditure incurred, up to a maximum of £2,000.

### **Hardship Award**

In addition to the Standard Award, Directorates may be eligible for a Hardship Award, if the Standard Award was insufficient to meet the actual costs incurred. As a guide, the Directorate would need to show costs amounting to at least one and a half times the total of the Initial Replacement costs (ie at least £3,600) and/or the Ongoing Administration costs (ie at least £46.50 per week) admissible under the Standard Award to be considered for a Hardship Award.

### **Pension Provision**

A Reservist who is called out is entitled to remain a member of his/her occupational pension scheme. In such cases, the MOD will pay the employer's pension contribution, provided the individual continues to pay the employee's element. (Regulation 16 of SI.309/1997 provides that the pension scheme administrator cannot refuse to accept MOD payments.)

### **Making an Application**

The letter received from the mobilised employee will provide application details and indicate the required supporting documentation. It will also include contact details if further advice is needed. The application will be determined by an Adjudication Officer appointed by the Services. If dissatisfied with his/her decision, the Council can appeal to the independent Reserve Forces Appeal Tribunal via its Secretary.