

## **Application of 'Bear Scotland' on enforced shift 'over-runs'**

### **DRAFT (v1) Frequently Asked Questions**

The Bear Scotland ruling found that the European WTD requires workers' statutory holiday pay (20 days) to be calculated on the basis of their "normal remuneration" and that there must be an intrinsic or direct link between the payment claimed and the work that the worker is required to carry out.

Through the National Ambulance Strategic Partnership Forum, UK Ambulance Employers and Trade Union Representatives have agreed guiding principles which Ambulance Trust will be implementing during the period April-June 2017.

The following FAQs have been developed by the NASPF and should be read in conjunction with the Ambulance Trust policy statement and associated implementation guide.

### **What is an enforced shift 'over-run'?**

An enforced shift 'over-run' is considered to be an unavoidable/unplanned (enforced) event that staff are dispatched to a late incident or an incident that takes them over their scheduled shift end time, take an emergency or urgent call which they cannot walk away from at the planned end time for their shift. Additionally, it is recognised that staff who have not been stood down for their unpaid break, ie have worked through their shift without an unpaid break, have in effect be forced to 'over-run' within their planned hours for that shift

### **What is statutory annual leave? Does it include bank holidays ?**

This is limited to the 20 days' annual leave provided by Article 7(1) of the Working Time Directive 2003/88/EC only (implemented by Regulation 13 of the WTR). The 8 bank holidays of "additional leave" under Regulation 13A of the WTR are not included.

### **Does the calculation include other regular payments?**

No, this guidance does not include any other payments, including voluntary and planned overtime, other incidental payments, such as: late notice shift changes, late or missed meal breaks or disturbed meal breaks.

### **If I have taken compensatory rest following an over-run, will my statutory annual leave calculation include an additional payment?**

No, the calculation is only based on 'over-run' payments, if time off in lieu or compensatory rest is taken no amendment to the calculation will be made.

### **The Bear Scotland case refers to a reference period, what is the reference period for our Trust?**

ADD LOCAL ANSWER HERE, DEPENDANT ON PROCESSING METHOD USED

**How can I claim the additional payment within my statutory annual leave? Will it be automatic payment**

ADD LOCAL ANSWER HERE, DEPENDANT ON PROCESSING METHOD USED

**Only questions for local Trusts to cover if required/applicable**

Will I receive back pay for payments not made within 2014, 2015 and 2016? Again for each Trust to clarify if a local grievance resolution has been made.

I've not put a claim in for last year and it's been 3 months since I have taken any annual leave – can I still claim?