



**LEE VALLEY REGIONAL PARK AUTHORITY**

**EXECUTIVE COMMITTEE**

**30 APRIL 2015 AT 10:30**

**Agenda Item No:**

**7**

**Report No:**

**E/402/15**

**PAYMENT FOR ANNUAL LEAVE**

Presented by the Director of Finance & Resources

**EXECUTIVE SUMMARY**

The purpose of this report is to seek Member approval to the method of calculation for accrued annual leave when employees leave the Authority. Members are also asked to consider whether this should apply retrospectively to those who have left the Authority in the past three months.

**RECOMMENDATIONS**

- Members Approve:
- (1) the method of calculation used for paying leavers accrued annual leave from 1 April 2015 will be the 260 days calculation as set out in paragraph 13 of this report;
  - (2) paying those recent leavers who have challenged the current calculation (the difference between the 365 days calculation and the 260 days calculation); and
  - (3) paying those employees who have left the Authority within the past 3 months the difference between the 365 days calculation and the 260 days calculation if they lodge a written claim.

**BACKGROUND**

- 1 Current Authority terms and conditions allow for employees to carry forward annual leave (up to six) days in any one leave year to be used in the following leave year. In addition the review of benefits (Paper 3815 in June 2005) also allowed employees to bank up to six days a year (up to a maximum of thirty days) to use as a one-off extended leave period. Current contractual annual leave entitlements for Authority employees are set out at Appendix A to this report. Usually this extended leave would be used to achieve a life ambition either, educational, travelling or some other aspiration of the employee. This was seen at the time as an innovative way of recruiting and retaining employees by making the Authority an employer of choice, when, in a competitive

employment market staff were difficult to recruit and finances restricted the Authority's ability to compete effectively against the London wage market.

- 2 In addition the Authority has seen some exceptional years leading up to and after the London 2012 Games in preparing for the games and bringing transformed legacy venues into use. The last year has also seen exceptional workloads as officers have prepared for the transfer to, and implementation of, the Lee Valley Leisure Trust Limited (LVLT).
- 3 This has meant many employees have put in significant extra hours delivering these key organisational objectives, without always having the ability to take annual leave to their contractual levels, resulting in some employees having accrued a number of banked and unused leave days.
- 4 As a consequence when employees leave the Authority they are paid for any annual leave which they have accrued and not taken. The calculation for paying any outstanding leave is currently worked out on a 365 days per year. This method of calculation has always historically been used by the Authority.
- 5 The current calculation used for paying accrued annual leave when an employee leaves the Authority is:
  - Annual salary ÷ 365 days × numbers of days holiday to be paid.
- 6 This calculation has recently been subject to a formal challenge through the Authority's Grievance Procedure by a number of leavers who believe that their annual leave payments should have been calculated using a 260 days (working days) calculation.
- 7 Officers have therefore taken some independent legal advice on this matter.
- 8 Comparisons have also been gathered from other local authorities and private companies to ascertain current practise in other organisations – see Appendix B to this report.

## LEGAL ADVICE

- 9 Legal advice was taken from Employment Law Specialists, Bircham Dyson Bell (BDB) and Trowers & Hamblins (T&H) regarding the calculation of holiday pay.
- 10 The advice received confirmed that although there is no actual calculation set out in legislation for the payment of annual leave to leavers, there is recent case law that demonstrates a 260 days (working days) calculation is now best practice and is likely to be supported by an employment tribunal.
- 11 This advice also states that the 365 days per year calculation could be challenged through claims for unlawful deductions of wages in an employment tribunal. This is supported by the Working Time Regulations (WTR), the Employment Rights Act and this new method of calculation.
- 12 Any claims for unlawful deduction of wages can go back 3 months from an employees leaving date so the financial liability and risk is low. Employees could also claim breach of contract, which can go back up to 6 years from their leaving date, but this risk is very low due to the likely costs incurred by a claimant of lodging a claim through the County Court.

**GOING FORWARD**

- 13 Following the legal advice officers propose changing the current calculation of paying leavers for accrued annual leave to:
- Annual salary ÷ 260 days × numbers of days holiday to be paid.
- 14 There is a risk of potential claims from employees who are leaving the Authority in relation to unlawful deductions to wages if the current position is not addressed, with challenges dating back at least 3 months. Therefore officers propose that those who have challenged this are paid the difference between the 365 calculation and the 260 calculation and those who have left in the past 3 months are paid the difference if they put forward a claim.
- 15 Employee terms and conditions and benefits will be reviewed to ensure that those contractual terms and conditions previously agreed (Paper 3815 in June 2005) are still relevant, affordable and achieve the wider business objectives of the organisation. This will be undertaken over the coming months and a report will come to Members on this matter in the summer once the review is concluded.
- 16 It is important to note that this challenge, its outcomes and the need to revisit contractual terms and conditions and benefits, is not attributable to the transfer to the Trust, as this situation would have arisen even if the Trust were not to exist. However a report on the annual leave calculation will also be taken to the Trust Board in May with the same recommendations.

**ENVIRONMENTAL IMPLICATIONS**

- 17 There are no environmental implications arising directly from the recommendations in this report.

**FINANCIAL IMPLICATIONS**

- 18 A cost analysis was carried out in relation to leavers over the last financial year. It is anticipated that the worst case scenario will cost the Authority in the region of £20,000.

The cost of paying the difference between the 365 day and 260 day calculation is:

Leavers currently challenging this	= £5,934.63
January to April 2015 Leavers	= £9,003.02
Leavers up to 30 April 2015 (April 2014 to April 2015)	= £20,707.03

- 19 Although this will have a direct impact on specific budget heads, depending on where any particular employee worked, it is unlikely it will have a material impact on the Authority's overall annual bottom-line and therefore this cost should be absorbed within cost centres and if a variation is identified this can be managed through the quarterly revenue monitoring reported to Members either through a virement or through general reserves.

## **HUMAN RESOURCE IMPLICATIONS**

- 20 The human resource implications arising directly from the recommendations are set out in the body of this report. In addition the Chief Executive of the Authority and the Managing Director of the Trust have agreed to proactively manage leave going forward to reduce future financial liabilities falling on either organisations and ensure staff take their contractual entitlement in the year it is allocated.

## **LEGAL IMPLICATIONS**

- 21 The legal implications arising directly from the recommendations are set out in the body of this report.

## **RISK MANAGEMENT IMPLICATIONS**

- 22 The risk management implications arising directly from the recommendations are set out in the body of this report.

## **EQUALITY IMPLICATIONS**

- 23 There are no equality implications arising directly from the recommendations in this report.

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## **PREVIOUS COMMITTEE REPORTS**

Authority	Paper 3815	Flexible Benefits	23 June 2005
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## **APPENDICES ATTACHED**

Appendix A	Current Contractual Annual Leave Entitlements.
Appendix B	Comparison of Annual Leave Calculations for Leavers – April 2015

## **LIST OF ABBREVIATIONS**

BDB	Bircham Dyson Bell
T&H	Trowers & Hamblins
LVLT	Lee Valley Leisure Trust Limited
WTR	Working Time Regulations

**Current Contractual Annual Leave Entitlements**

**Permanent/Fixed Term Employee**

Up to scale point 28	26 days + bank holidays
Scale Point 29-40	28 days + bank holidays
Scale Point 41 and above	30 days + bank holidays

(5 extra days awarded after 5 years continuous service)

**Relief/Casual Employees**

28 days inclusive of bank holidays

**Part Time Employees**

Part time workers receive the same holiday but entitlement is calculated in hours on a pro rata basis.

For example:-

$$\frac{21 \text{ hours worked per week} \times 34 \text{ days (26 days + 8 bank holidays)}}{35 \text{ hours (full time equivalent)}} = 20.4 \text{ days}$$
$$20.4 \text{ days} \times 7 \text{ hours} = 142.8 \text{ hours entitlement}$$

**Note: If a Bank Holiday should fall on a day that the employee would normally work then they must use the hours from their annual leave entitlement.**

**Comparison of Annual Leave Calculations for Leavers – April 2015**

**Potential Options:**

1. Annual salary ÷ 365 days × number of days holiday owed
2. Annual salary ÷ 365 days Grossed up (ie number of days holiday owed ÷ 5 × 7) × number of days holiday owed
3. Annual salary ÷ 260 working days × number of days holiday owed

<b>Organisation</b>	<b>Calculation used</b>
<b>LVRPA</b>	<b>Salary ÷ 365 x No. Days holiday owed</b>
<b>Public Sector</b>	
Dacorum BC	365 days
Braintree DC	365 days Grossed up
North Herts DC	365 days Grossed up
One Source	260 days
Watford BC & Three Rivers DC	260 days
East Herts DC	260 days
Tendring DC	260 days
Basildon DC	260 days
<b>Private Sector/Other Organisations</b>	
London Sport	260 days
Fusion	260 days
Premium Credit Ltd	260 days
Tesco	260 days
Henkel Ltd	260 days