

Police Federation
Of England and Wales



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Established by Act of Parliament

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FROM THE GENERAL SECRETARY'S OFFICE

AF/sjr

19 April 2016

To: All Joint Branch Board Chairman & Secretaries
Cc: Interim National Board

JBB Circular: 09-2016

Dear Colleagues

Employment Appeal Tribunal Bear Scotland v Fulton– overtime and holiday pay

This circular revises and replaces JBB circular 39-2015. It provides further clarity with regards to the circumstances under which payments should be made. The new sections are highlighted in red.

I sent you an email on 10 December 2015 to advise you of an agreement reached with CC Francis Habgood on behalf of the NPCC, in respect to the calculation of holiday pay following the decision in the Bear Scotland EAT case. I undertook to provide you with a fuller explanation of the agreement reached.

Background

As you will be aware, the matter has arisen out of the EAT ruling in the case of Bear Scotland v Fulton in which the court found that the calculation of “normal remuneration” paid to workers whilst on annual leave should include overtime and other regular additional payments.

PFEW has been working with the NPCC for some time to reach agreement over the application of the Bear Scotland ruling to police officers and what payments should be included when calculating holiday pay.

As previously advised in JBB circular 8-2015 and in updates to INC meetings, our preference has always been to reach a negotiated solution rather than resort to large scale litigation to enforce members' rights. On 25th June 2015 PFEW wrote to the NPCC to suggest a way forward that was both fair to officers and affordable. This addressed both historic claims and the position going forward.

In terms of historic claims, forces would need to calculate the amount owed to each officer individually. However, the administrative burden was likely to be high and it was not clear that all forces had the ability to do this. Therefore, as an alternative, PFEW suggested that all constables and sergeants should be paid a sum of £60 each. This reflected the average payment officers would be entitled to for four weeks' holiday pay for any three month period. This amount was calculated using PNB pay census data. This is similar to other agreements reached in other sectors. Going forward payment would be based on actual overtime and other payments received on a regular basis over a reference period. We therefore consider the offer made by NPCC to be reasonable and on that basis it has been accepted.

The agreement

Firstly, the agreement signifies that the NPCC accepts that the decision in the Bear Scotland EAT case means that members are entitled to holiday pay that includes their regular overtime pay and several other regular payments too. This will be for a maximum of four weeks annual leave i.e. 20 days (NB statutory annual leave under the Working Time Directive).

The elements of normal remuneration that will be included in the calculation of holiday pay for the first 20 days of annual leave are:

- All forms of overtime
- Compensation for public holiday working
- Unsocial hours allowance
- Away from home overnight allowance
- Acting up allowance
- Rest day working compensation
- Pay for additional hours worked by officers who work part time (plain time up to 40 hours)
- **On call**

The agreement does not cover time off in lieu (TOIL). If a payment is exchanged for TOIL it should not be included in the calculation because the core principle is that an officer on relevant leave is entitled to normal remuneration. It is our view that the concept applies to monetary payments and therefore does not apply when a payment is exchanged for TOIL.

The payment is effective from 1 January 2016 although forces do have some discretion as to when to commence this calculation if they experience difficulties in obtaining the details on which to base the calculation.

The calculation for payment is 20/365 of total payments identified in the list above paid during a 12 month reference period, which will be a rolling 12 month prior to commencement of the allowance. Forces will have discretion in relation to the frequency of the payment i.e. monthly, quarterly or annually.

In addition, to address historic claims, a three months' arrears period is to be paid as a one off payment, prior to the commencement of the payment of members' actual entitlement based on the list above on 1 January 2016. Forces have discretion to pay £60 per officer or

the actual entitlement i.e. 5/365 of the total payments identified in the list above, paid during the reference period.

The offer from the NPCC states that the payment will be split for pension purposes to reflect the pension status of each individual payment. It is our view that it is probably only additional pay at plain time for officers who work part time that is pensionable.

For clarity, it is our view that the agreement applies to all federated ranks, including the Inspecting ranks. It also applies to both full-time and part-time officers. With regards to the arrears payment, officers should be paid either the £60 flat rate payment, or the actual entitlement, as detailed above.

Moving forward

I would be grateful if you could keep me informed of any issues of non-compliance with this agreement, which if necessary I will raise with CC Habgood through the Police Consultative Forum (PCF). Please email Elaine Parker or Karen Pinfold at pnbresearch@polfed.org if necessary.

Following the abolition of the PNB, there is no facility to publish such an agreement in a format similar to a PNB circular. This is very frustrating and PFEW has continued pointed out this gap in the new arrangements. However, I will be asking the PCF to consider whether the Home Office needs to amend Regulations and Determinations in line with this agreement or whether a Home Office circular should be issued.

The ruling in Bear Scotland is one of a series of tribunal decisions which have indicated a direction of travel that the calculation of holiday pay should include normal remuneration where there is an intrinsic link between the payment and the work the worker is required to carry out. We will continue to monitor developments elsewhere and any future Tribunal rulings that may impact on members' entitlement to holiday pay.

Yours sincerely



ANDY FITTES
General Secretary