



**FOR PUBLICATION**

**DERBYSHIRE COUNTY COUNCIL**

**APPOINTMENTS AND CONDITIONS OF SERVICE COMMITTEE**

**23 September 2021**

**Report of the Director of Organisation Development and Policy**

**Review of standby, sleep-in and recall to work duty terms and conditions**

**1. Purpose**

- 1.1 To seek approval to apply revised terms and conditions in relation to standby, sleep-in and recall to work (SSR) duty.

**2. Information and Analysis**

- 2.1 As a result of issues being raised by trade unions in 2020, the Council agreed to review the terms and conditions of SSR duty. The review aims to provide a clear set of terms and conditions relating to all aspects of SSR duty. The level of pay and remuneration aims to be fair for all employees undertaking SSR duty reflective of the length of duty being undertaken.
- 2.2 The Council has undertaken a process of employee, manager and trade union engagement through a series of working groups and workstream meetings since January 2021. A summary of feedback from the engagement sessions can be found in appendix 2.

- 2.3 Benchmarking across a number of other councils has been carried out to inform the review. A summary of benchmarking can be found in appendix 3.
- 2.4 The Council has undertaken analysis of SSR duties and working time data from 1 April 2019 to 31 March 2020 to take into account SSR duty in a non Covid impacted year. Analysis has shown that the level of standby and sleep-in duty payments during the last two financial years is consistent and therefore numbers of standby and sleep-in duty claims does not appear to have been significantly affected by the Covid pandemic.
- 2.5 The table below shows the total number of claims within the reference period and cost of claims based on 2020/2021 duty rates.

Type of duty	Current duty rate	Number of claims	Total cost based on 2020/21 duty rates
Standby duty	£27.02	32,174	£1.012m
Sleep-in duty	£27.02	10,327	£0.279m
Recall to work duty	£27.02 <i>(included the first 30 mins working time)</i>	141	£0.004m
Totals		42,783	£1.286m

- 2.6 Current terms and conditions allow for standby duty payments undertaken on Saturdays and Sundays to be eligible for two claims if they cover a 24-hour period.
- 2.7 The total pay bill spend on SSR duties is estimated at £1.3m based on the total of claims made within the reference period

### Summary of proposals

- 2.8 On 6 September 2021, the Council and Joint Trade Unions reached a collective agreement on a revised set of terms and conditions for SSR duty, that meet the objectives of the review. The revised set of terms and conditions are as outlined below:
- 2.9 Standby duty - Duty payment rates of £27.02 will apply for the first 8 hours of standby duty, with an additional basic rate payment of £3.38 for each two-hour block thereafter up to 24 hours, providing payment for a 24-hour period at £54.06. The payment for any 8 or 2-hour block of time that spans into or out of a bank holiday will receive enhancement to double the duty

payment rate. Any 8 or 2-hour block of time that is not within the bank holiday period would be paid at the basic duty payment rate.

- 3.0 The rationale for having a minimum period of standby of 8 hours is to provide a payment that is reflective of the potential sacrifice if an employee were to be called out. For example, employees may be on standby for much shorter periods of time however they need to make themselves available for a day's work if required, therefore this impacts their ability to make social plans. The estimated additional cost to the council pay bill for the revised terms and conditions is estimated at £0.216m.
- 3.1 Sleep-in duty – It is proposed to maintain a flat rate sleep-in duty as the period of sleep-in duty is relatively static i.e. between 8-10 hours. In order to maintain parity with the proposed change to standby duty payment rate, the basic duty payment rates for sleep-in duty will be increased to £30.40. Where sleep-in duty spans into or out of a bank holiday, the duty will be enhanced to double the basic duty payment rate. The estimated additional cost to the Council pay bill for the revised terms and conditions is estimated at £0.046m.
- 3.2 Recall to work - The extent that recall duty payments are utilised within the Council is low with only 141 in 2019/20 reducing to 22 claims in 2020/21. It is proposed to reflect the following changes;
- 3.3 The Council will remove the requirement to include the first 30 minutes working time within the duty payment. Based on an average pay rate for 141 claims, the additional cost would be £1.1k. Actual cost is lower due to inaccuracy of claims being made. Working group feedback identified employees have incorrectly claimed from the moment they start work rather than deducting the first 30 minutes from the claim.
- 3.4 Travel time is included in the duty payment rate of £27.02 for those who are required to travel before they start work. This is offset by the removal of the first 30 minutes working time rule above.
- 3.5 Where there is not a requirement to travel before starting work, recall will be paid at a proposed reduced rate of £20 per recall. The reduced rate is offset by the removal of the first 30 minutes working time rule.
- 3.6 Duty payment rates as outlined within the report will be applied from 1 November 2021 and will not be subject to annual pay award for 2021/22. SSR duty payments will be subject to future pay awards as of April 2022. Payments for duties relating to Bank Holidays will be backdated to 1 December 2020

### **3. Alternative Options Considered**

- 3.1 During the review the Council has considered a range of different options. These included lower duty payments for employees who are on duty for shorter periods of time i.e. those on less than 8 hours would receive a proportionate payment based on the number of hours undertaking the duty. This would not have recognised the sacrifice and impact on employees personal and social life if there is a requirement to respond to a call. There would have also been equality impacts on female workers who tend to undertake standby duty for shorter periods of time and were therefore discounted.
- 3.2 Lower 24-hour standby payment rates were considered through consultations to limit a 24 hour payment to £50.06 which is lower than the current payment duty rate. However, this proposal would have detrimental impact on service cover arrangements would have disincentivised employee engagement in standby rota arrangements and was therefore amended during the consultation process.
- 3.3 Various options were considered in respect of how to enhance duties that are undertaken on a bank holiday, with initial proposals only enhancing the duty that commences on the bank holiday. This was deemed to be less equitable for those employees that commence the duty on the day before the bank holiday where the duty runs into the bank holiday, in some cases for a significant part of the day. Alternative proposals were developed to recognise the hours that fall within the bank holiday with any time that falls within the bank holiday receiving the bank holiday enhancement.

### **4. Implications**

- 4.1 Appendix 1 sets out the relevant implications considered in the preparation of the report.

### **5. Consultation**

- 5.1 The Council has consulted with employee and manager representatives along with the recognised Joint Trade Unions on SSR terms and conditions.
- 5.2 The Council has reached a collective agreement with the Joint Trade Unions to vary the Council's SSR terms and conditions.

## **6. Background Papers**

6.1 None

## **7. Appendices**

7.1 Appendix 1 – Implications.

7.2 Appendix 2 - Working group engagement feedback.

7.3 Appendix 3 - Benchmarking analysis.

## **8. Recommendation(s)**

That ACOS agree to:

a) implement revised terms and conditions for standby, sleep-in and recall to work duty with effect from 1 November 2021.

b) backdate payment for the revised terms and conditions for bank holiday duty payment to 1 December 2020

## **9. Reasons for Recommendation(s)**

9.1 The Council feels that the recommendation meets the objectives of the review and provides a revised set of terms and conditions that are fair and reflective of the length of duty being undertaken.

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## Implications

### Financial

- 1.1 Implementation of all the recommended terms and conditions relating to standby, sleep in and recall to work would increase the total annual pay bill by an estimated £0.33m including on costs based on current service arrangements.
- 1.2 Under the arrangements of the collective agreement, SSR duty spend of £1.3m will not be subject to provision for pay award for 2021/22. The pay award for 2021/22 is anticipated to be 1.75%, which equates to £0.028m including oncosts.
- 1.3 The Council has committed to backdating any changes to bank holiday standby payment to 1 December 2020. To treat all employees equally, it is proposed that bank holiday payments are backdated for all standby and sleep-in and recall to work duty payments. The anticipated additional cost is £0.056m including on-costs.
- 1.4 Any increases to departmental pay bills as a result of changes to SSR terms and conditions will need to be met from existing departmental budgets.

### Legal

- 2.1 Consideration has been given to potential legal challenge from the proposals outlined in this report. As the proposed duty payment rate for standby would remain the same for periods up to 8 hours, with increases only applicable where employees are required to undertake standby duties in excess of this, there is no clear detriment to any employees. Indirect discrimination based on sex would require a clear detriment to be identified. There is no detriment to female employees undertaking standby duty up to 8 hours as the pay rate will remain the same.
- 2.2 Where predominantly male roles receive a higher rate of standby duty payment it may create equal pay liability. However, the standby duty is not work and if it were to be considered work for the purpose of equal pay, the Council may have a material factor defence of ensuring payments reflect the length of time the employee is on standby. It is not deemed to be a bonus or additional payment.

- 2.3 The recent Supreme Court decision in *Royal Mencap Society v Tomlinson-Blake; Shannon v Rampersad and another (t/a Clifton House Residential Home) [2021]* confirmed that workers on sleep-in shifts were only entitled to the national minimum wage in respect of hours in which they were required to be awake for the purposes of working, not for the whole shift.
- 2.4 The roles that require sleep-in duties to be undertaken are predominantly female however, sleep-in and standby duties have different requirements and are arguably not comparable. Standby duty enables an employee to remain at home unless required to work. Sleep-in duties require an employee to sleep at the place of work and be available during the night should any incidents arise. All of those who carry out sleep-in duties will receive the same payment therefore, male and female employees will receive equal pay.
- 2.5 The suggested amendments to the recall policy do not appear to pose any significant legal risk. Recall is not a contractual requirement and is only payable when an employee is required to return to work and agrees to do so. This is not a scheduled rota and is only used in emergency situations. It is not commonly used across the Council and there is not clear evidence that male or female roles predominantly receive recall payments.

## **Human Resources**

- 3.1 The Council will develop updated guidance within the Working for Us booklet which will be communicated through Our Derbyshire to employees in October 2021. A series of briefing sessions to managers will be made available throughout October 2021, implementing new terms and conditions as of 1 November 2021. Backdated pay for bank holiday working will be included within November 2021 pay for current employees who are covered by the agreement.

## **Information Technology**

- 4.1 HR Services will develop SAP updates to show the revised duty payments on payslips.

## **Equalities Impact**

- 5.1 Analysis of standby, sleep-in and recall workforce data confirms that all employees regardless of protected characteristics will not be disadvantaged as a result of the revised terms and conditions.
- 5.2 All employees undertaking sleep-in duty will benefit equally from the proposed increase in sleep-in duty payments rates regardless being identifiable within a protected characteristic or not.
- 5.3 Standby is predominately undertaken by male employees within the Council with 62% of claims being made by males, compared to 38% female. Analysis shows that the revised terms and conditions will not disproportionately benefit any group of employees on the basis on their gender or other protected characteristics. 75% of female claimants will benefit from the revised terms and conditions compared to 70% of males.
- 5.4 Recall to work payments are claimed by relatively few employees, with two thirds of claims being made by male employees. The impact of revised terms and conditions for recall to work duty is therefore negligible.



### Working groups engagement feedback

Six working groups were held during March 2021 to obtain feedback from managers and employees on standby, recall and sleep in terms and conditions as part of the SSR review. The feedback from all sessions has been collated and is combined below.

#### Standby duty

- That standby rotas are currently covered either as a contractual requirement of the role or voluntarily and these are vital to enable out of hours cover arrangements to be managed
- It can be a challenge to get volunteers for bank holiday standby cover, and these are often reliant on goodwill
- Pay for bank holiday standby cover particularly during the Christmas period was raised as an issue, with a suggestion to consider enhancements to bank holiday standby duty payments to tackle this
- The current limit of being able to make a maximum of 9 claims per week due to Friday morning and Monday evenings being linked was put forward as an issue
- The level of payment related to the length of duty was raised as an issue. Although concerns were raised that employees with shorter standby period will receive less money and the service implications of employee engagement in voluntary standby rotas as a result of time related payment rates.
- It was felt that the level of payment is not sufficient or reflective of the level of sacrifice
- Some participants felt that travel time for standby duty should be paid time.

#### Sleep-in duty

- Sleep in patterns and the length of the sleep-in duty is more regular and consistent across services than for example standby duty periods
- Whilst on sleep in duty employees get the benefits of reduced travel between shifts and provision of meals
- The level of compensation for undertaking a sleep-in duty is to reflect impact on home life, quality of downtime when not working and the issues of sleeping at a place of work
- Groups suggested to differentiate pay for bank holiday and/or weekend working
- The rate of pay for sleep-in duty was not raised as a particular concern by any of the working groups.

#### Recall to Work duty

- The benefit of operating recall is that it provides a flexibility that standby doesn't allow, and allows the department to supplement resource without the standby duty costs
- Recall is rarely invoked (last year around 140 claims were made across the Council)
- Different views exist on how to apply the recall rules; around the inclusion of the first 30 minutes of working time (which may include travel time) before any hours worked are claimed and therefore different practices are operating across the council
- Unclear regarding rule of when recall can be claimed when working can be claimed (from the moment you get the call, when you start to travel to site or when you arrive at site)
- Suggested enhancement of bank holiday recall payments
- There were various suggestions on how recall could be paid, such as minimum number of hours, maintain comparable rate to standby, lower rate to standby/sleep-in
- Recognised that being able to make a payment to incentivise employees is key to services cover arrangements

## Benchmarking analysis

## Appendix 3

The table below shows the relative level of pay and remuneration of standby duty based the equivalent duty for full week (9 session) equivalent to DCC's current terms and conditions and the pay difference for 8, 12 and 24 hour sessions.

	<b>Costs assumed for a full normal week of standby based on rates quoted equivalent to 9 DCC sessions</b>	<b>Payment for 8 Hrs</b>	<b>Payment for 12 Hrs</b>	<b>Payment for 24 Hrs</b>	<b>Payment for 24 Hrs BH</b>
Derbyshire County Council	£243.18	£27.02	£27.02	£54.04	£54.04
Council 1 (Borough Council, East Midlands)	£199.15	£28.45	£28.45	£28.45	£28.45
Council 2 (County Council, East Midlands)	£128.18	£19.89	£29.83	£59.66	£59.66
Council 3 (District Council, East Midlands)	£163.80	£19.62	£19.62	£32.85	£32.85
Council 4 (District Council, East Midlands)	£114.75	£9.81	£9.81	£32.85	£32.85
Council 5 (Borough Council, East Midlands)	£270	£30	£30.00	£30.00	£30.00
Council 6 (County Council, East Midlands)	£268.47	£29.83	£29.83	£59.66	£59.66
Council 7 (City Council, South)	£108.00	£12.00	£12.00	£24.00	£24.00
Council 8 (County Council, South)	£92.52	£10.28	£10.28	£20.56	£20.56

Council 8 (County Council, South)	£277.47	£30.83	£30.83	£61.66	£61.66
Council 9 (County Council, South)	£180.00	£20	£20.00	£40.00	£40.00
Council 10 (City Council, South)	£271.17	£30.13	£30.13	£60.26	£60.26
Council 11 (County Council, East)	£151.56	£16.84	£16.84	£33.67	£33.67
Council 12 (City Council)	£268.47	£19.89	£29.83	£59.66	£59.66
Council 13 (Borough Council)	£179.01	£13.26	£19.89	£39.78	£59.13
<b>Average rate</b>	<b>£190.90</b>	<b>£20.77</b>	<b>£22.67</b>	<b>£41.65</b>	<b>£43.03</b>
<b>Average rate for local comparisons</b>	<b>£198.98</b>	<b>£21.34</b>	<b>£24.66</b>	<b>£42.86</b>	<b>£45.28</b>
<b>Average pay difference</b>	<b>£44.20</b>	<b>£5.68</b>	<b>£2.36</b>	<b>£11.18</b>	<b>£8.76</b>

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### Sleep-in

Of the 9 respondents only 4 of the respondents have sleep-in duty, other Councils who have responded either do not have residential services or may have services where there are more working night staff. None of the Councils apply enhancement for bank holiday or weekend sleep-in duty.

Two of the responding Councils apply NJC sleep-in rates (£37.07), 1 Council pays £35.86 inclusive of first 30 minutes worked time and Council 9 pay £40 inclusive of first 30 minutes worked time

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### Recall

4 of the 9 councils that responded to benchmarking make payments for recall/call in sessions. None of the Councils apply enhancement for bank holiday or weekend recall duty.

- Council 1 (Borough Council, East Midlands), pays 1 hour of the hourly rate on top of any worked time.

- Council 5 (Borough Council, East Midlands), pays 2 hours at plain time as a minimum, then 2 hours at time plus half.
- Council 6 (County Council, East Midlands), pays minimum hour payment for attending site only
- Council 12 (County Council, East Midlands), pays £35.86 inclusive of first 30 mins worked time

Only Council 5 include travel time as worked time for recall payments.

