

# Equality Impact Analysis Record Form 2023 – Derbyshire County Council

## Introduction and context

Policy/ Service under development/ review		Holiday Entitlement & Pay			
Department/ Corporate		CST/Reward and Resourcing			
Lead officer		Scott Davis			
EIA Team:		Emma Ellis, Pay and Reward, Lukasz Gazda, EDI Manager			
Date analysis commenced:	05/05/2023	Date completed:	11/09/2023	Date approved:	16/10/2023

## About the service/ policy or function and the reason for the EIA

<p>What is the purpose of the service, policy or function?</p> <p>On 20 July 2022, the Supreme Court handed down its judgement on Harpur Trust v Brazel. The judgement held that the correct interpretation of the Working Time Regulations 1998 is that holiday entitlement for part-year workers should not be pro-rated so that it is proportionate to the amount of work that they perform each year. Part-year workers are entitled to 5.6 weeks of statutory annual leave calculated using a holiday entitlement reference period to determine their average weekly pay, ignoring any weeks in which they did not work.</p> <p>As a result of this judgement, part-year workers are now entitled to a larger holiday entitlement than part-time workers who work the same total number of hours across the year.</p>
--

Are there any proposals to change these?

We are seeking to apply an amendment to payment days for term time workers where the Council does not currently meet legislative requirements and provide back pay for a period of two years.

We also intend to update the Council's Normal Holiday Pay Framework (NHPF) to ensure that it provides a fair method of payment for holiday pay can continue to be an administratively viable solution.

### **Supporting evidence about impact**

What is presently known about how the current service or policy impacts upon people with a protected characteristic, people from disadvantaged communities, armed forces personnel and other groups outlined in the Council's guidance for EIAs?

Two areas the Council is proposing to change are the NHPF and payment days for 38-week workers. The NHPF provides a proportion of pay based on all enhancements on additional hours, overtime, pay for evening and weekend working, standby, sleep-in, recall and letting duty payments, and taxable travel time when attending work. See a copy of the NHPF Guidance in Appendix 1. Employees have the option to opt out of the NHPF and have their entitlement calculated in accordance with the Employment Rights Act (ERA) however in the last 3 years HR Service have not received any opt out requests from employees.

The Council has a wide range of payment days to reflect different working arrangements of employees who work a reduced number of weeks, reflecting the different annual leave entitlements based on pay grade and length of service. From all the different permutations applied by the Council departments and Schools, only employees who work 38 weeks per year with under 5 years' service currently receive less than 5.6 weeks total paid leave entitlement. Advice from the Local Government Association and practice being applied by other council is to provide a top-up to employees to making sure annual leave entitlement is applied in line with the current legislation.

Approximately 97% of 38 week workers benefiting from the temporary uplift are female.

There are approximately 1700, 38 week worker employees across Schools and Council. Of these, approximately 1660 are female ranging from grade 1 to grade 9.

Please detail the sources for the above information

Information taken from SAP

Is consultation planned/ has consultation take place? If Yes, what is this telling us about the likely impact on the protected characteristic and other communities/ groups etc.?

The Council has engaged with the Joint Trade Unions to outline the proposed amendments to 38 week workers payment days and the Holiday Pay Framework through the Council's Policy Forum. There was no impact highlighted on any protected characteristic, communities or groups.

If there is insufficient information to determine likely impact, what information is needed and how will it be obtained in the future?

N/A

### Part 3. Analysing and assessing the impact by equality Protected Characteristic group

Use the information, customer feedback and other evidence to determine upon whom the policy/ service and any proposed changes will impact upon and how, highlighting where these have a negative, positive or no impact, including where this could constitute unfair treatment, limit access, or result in additional inequality or disadvantage, hardship, or exclusion.

For any identified negative potential impact, you must provide details of any action or options which could mitigate against this, and in serious cases, you should highlight where the Council would be advised not to proceed with a new or changing policy or service, including any proposals which are being considered.

Please use your action plan towards the rear of this document to record the action and the monitoring that will take place to deliver or identify appropriate mitigation.

<b><i>Protected Characteristic or Group</i></b>	<b><i>Positive impact</i></b>	<b><i>Negative impact</i></b>	<b><i>No impact</i></b>
<b><i>All protected characteristics</i></b>			
<b>Age</b>			<b><i>Considered – no impact</i></b>
(Please describe)	There are no anticipated impacts on age from the proposals within this policy.		

<b>Protected Characteristic or Group</b>	<b>Positive impact</b>	<b>Negative impact</b>	<b>No impact</b>
<b>Disability</b>			<b>Considered – no impact</b>
(Please describe)	There are no anticipated impacts on disability from the proposals within this policy.		
<b>Gender re-assignment</b>			<b>Considered – no impact</b>
(Please describe)	There are no anticipated impacts on gender reassignment from the proposals within this policy.		
<b>Marriage &amp; civil partnership<sup>1</sup></b>			<b>Considered – no impact</b>
(Please describe)	There are no anticipated impacts on marriage and civil partnership from the proposals within this policy.		
<b>Pregnancy &amp; maternity</b>			<b>Considered – no impact</b>
(Please describe)	There are no anticipated impacts on pregnancy and maternity from the proposals within this policy.		
<b>Race &amp; ethnicity</b>			<b>Considered – no impact</b>
(Please describe)	There are no anticipated impacts on race from the proposals within this policy.		
<b>Religion/ belief<sup>2</sup></b>			<b>Considered – no impact</b>
(Please describe)	There are no anticipated impacts on religion / belief from the proposals within this policy.		
<b>Sex or gender<sup>3</sup></b>	<b>Yes</b>		

<sup>1</sup> Under EA 2010 – someone in a CP must not be treated less favourably than a married person

<sup>2</sup> Under EA 2010 – must also consider non-religious belief

<sup>3</sup> Sex and gender can be used at different times depending upon whether you are referring to the EA 2010 and the different duties which exist

<b>Protected Characteristic or Group</b>	<b>Positive impact</b>	<b>Negative impact</b>	<b>No impact</b>
(Please describe)	All staff in the affected group will be able to benefit from the uplift. However due to the profile of those employees, majority (approximately 97%) of 38 week workers benefiting from the uplift are female.		
<b>Sexual orientation</b>			<b>Considered – no impact</b>
(Please describe)	There are no anticipated impacts on sexual orientation from the proposals within this policy.		
<b>Human Rights</b>			<b>Considered – no impact</b>
(Please describe)	There are no anticipated impacts on human rights from the proposals within this policy.		
<b>Armed Forces personnel/ households</b>			<b>Considered – no impact</b>
(Please describe)	There are no anticipated impacts on Armed Forces personnel from the proposals within this policy.		
<b>Users of British Sign Languages</b>			<b>Considered – no impact</b>
(Please describe)	There are no anticipated impacts on users of British Sign Language from the proposals within this policy.		
<b>DCC Employees</b>	<b>Yes</b>		
(Please describe)	There are approximately 1700, 38 week worker employees across Schools and Council. Of these, approximately 1660 are female ranging from grade 1 to grade 9.		
<b>Community and Voluntary sector organisations working with protected characteristic groups</b>			<b>Considered – no impact</b>

<b><i>Protected Characteristic or Group</i></b>	<b><i>Positive impact</i></b>	<b><i>Negative impact</i></b>	<b><i>No impact</i></b>
(Please describe)	There are no anticipated impacts on Community and Voluntary sector organisations from the proposals within this policy.		
<b>Other not listed above</b>			
(Please describe)	N/A		

#### **Part 4. Summary of main findings**

By updating the calculation for the NHPF and increasing the payment days for 38 week workers, the Council is remaining compliant with current case law as well as having a positive impact on a predominantly part time, female section of the workforce.

The policy will be applied to all employees equally, regardless of their protected characteristics.

#### **Are there any recommendations for changes to proposals?**

N/A

#### **Proposed Equality Action Plan**

Please complete this Action Plan to outline any mitigation you intend to take.

Issue identified	Action required to reduce impact/ mitigate	Timescale and responsibility	Monitoring and review arrangements
Communications to employees	Effectively communicating to 38 week workers and those in receipt of additional holiday pay under the NHPF.		

**Date and outcome of any Cabinet/ Cabinet Member or Council Report to which this was attached and their decision:**

Appointments and Conditions of Service Committee – 16 October 2023