



NATIONAL AMBULANCE STRATEGIC PARTNERSHIP FORUM

INTERIM FRAMEWORK AGREEMENT ON CALCULATION OF HOLIDAY PAY

THIS AGREEMENT

is made on 19th October 2021

BETWEEN:-

English Ambulance Trusts
GMB
Royal College of Nursing
Unison
Unite

1. INTRODUCTION

- 1.1. In March 2021, the NHS Staff Council concluded a Framework Agreement on corrective payments which were agreed in the context of ongoing litigation regarding the calculation of the payment which a worker receives during a period of annual leave. Until a national, permanent solution to calculating pay during annual leave can be implemented via the Electronic Staff Record (ESR), the parties have been working in partnership on an interim solution.
- 1.2. This Agreement as a framework agreement represents the desire by English Ambulance Trusts and the Trade Unions to work in partnership to establish joint solutions to enable employees to be paid correctly during annual leave in line with Section 13.9 of the NHS Terms and Conditions of Service Handbook, Agenda for Change (AfC) and to avoid the damaging impact of litigation on the sector, the workforce and Trade Unions.
- 1.3. For the avoidance of doubt, this Interim Framework Agreement only covers the arrangements for the inclusion of overtime and additional basic pay in annual leave calculations and does not cover arrangements in respect of unsocial hours payments. Nothing in this agreement would prevent an employee from raising a complaint that is not related to overtime and additional basic pay, if they believe they have not been paid correctly during annual leave. The parties are committed to separate discussions on the application of section 2 unsocial hours arrangements, including their inclusion in holiday pay calculations.
- 1.4. This Agreement will supersede the Bear Scotland Agreement reached between the English Ambulance Trusts and the Trade Unions in 2017 under which payments have been paused either from 1st April 2021 or following the date of the NASPF agreement in June 2021. The parties agree that this agreement resolves the matters in relation to the Bear Scotland Agreement and these payments will not need to be reinstated as they will form part of payments due under this agreement. Any payments made under the Bear Scotland Agreement since the 1st April 2021 will be offset against payments made under this agreement.

2. DEFINITIONS

- “Eligible Employees” – all substantive, fixed term, full and part-time employees working over and above their contracted hours employed by English Ambulance Trusts under AfC who receive overtime or additional basic pay under section 3 of AfC and who are not currently receiving a payment for annual leave in respect of such overtime or additional basic pay under the ESR Average Pay Module;
- “ESR Average Pay Module” – the existing ESR method for calculating pay during annual leave using the averaging approach;
- “Interim Multiplier Payment” – the payment made under this Agreement to Eligible Employees and Section 2 Eligible Employees;





- “Revised ESR Average Pay Module” – the revised ESR average payment solution which, once developed, will be implemented nationally;
- “Section 2 Eligible Employees” – employees who are employed under section 2 of AfC and who have been paid under the ESR Average Pay Module from 1 July 2021.

3. DURATION

- 3.1. This Agreement has been reached by the parties to provide an interim only solution from 1st April 2021 until the implementation of the Revised ESR Average Pay Module and any agreed transition period to the Revised ESR Average Pay Module by English Ambulance Trusts. At the latest, this Agreement will cease automatically after 6 months of the national change to the Revised ESR Average Pay Module.

4. LONG-TERM SOLUTION

- 4.1. Subject to 1.3, all parties to this Agreement are committed to move to the Revised ESR Average Pay Module for the calculation of pay during annual leave once ESR has been revised in line with the Department of Health specifications and implemented.
- 4.2. All English Ambulance Trusts commit to transition to the Revised ESR Average Pay Module within 6 months of implementation.

5. INTERIM SOLUTION

Applicability

- 5.1. Where section 2 of NHS Terms and Conditions of Service Handbook applies and employees are currently being paid via the ESR Average Pay Module then this will continue to be the method of payment for these staff irrespective of any interim solution identified for Eligible Employees under this Agreement. This affects employees in receipt of section 2 unsocial hours payments in NWS and WMS. This position affects all employees of SWAST.
- 5.2. For Section 2 Eligible Employees (in NWS and WMS), and all employees of SWAST, the interim solution under this Agreement will apply from 1st April 2021 to 1st July 2021 only and no Interim Multiplier Payments will be made for payments for overtime or basic additional pay received after 1 July 2021.
- 5.3. For Eligible Employees (with the exception of SWAST employees), the interim solution under this Agreement will be applied from 1st April 2021 until the agreed transition date to the Revised ESR Average Pay Module. This will be no later than 6 months following implementation of the Revised ESR Average Pay Module as set out in 4.2.

Method of Payment

- 5.4. English Ambulance Trusts will use a multiplier applied to payments for overtime and to additional basic pay to take account of annual leave. Given that this is an interim solution and there are complexities in applying the multiplier, it has been agreed between the parties that an interim single multiplier percentage of 13% will be applied to each payment for overtime or to additional basic pay paid as an Interim Multiplier Payment.
- 5.5. Interim Multiplier Payments will be identified separately on each Eligible Employee's and Section 2 Eligible Employee's payslips.
- 5.6. Interim Multiplier Payments applied to overtime payments are non-consolidated and non-pensionable. Interim Multiplier Payments applied to additional basic pay are non-consolidated but will be pensionable. All payments under this agreement will be subject to deductions for income tax and national insurance contributions and other usual deductions.





5.7 The parties accept that it is not practical to apply regularity to this interim solution under this Agreement.

6. EQUALITY CONSIDERATIONS

- 6.1. The parties are committed to equal treatment in line with the Equality Act 2010 and it is agreed that English Ambulance Trusts will carry out equality impact assessments regarding the interim solution under this Agreement.
- 6.2. The parties will work in partnership on approaches to any adjustments to the interim solution under this Agreement to ensure that those with any protected characteristic are not disadvantaged.

7. FUTURE LITIGATION

- 7.1. All parties accept that the purpose of seeking agreement on an interim solution to calculations for pay during annual leave in respect of overtime and additional basic pay is to find a consistent solution across the ambulance sector which protects employees and is the best approach given the technical difficulties of implementation, until a national change can be made to the ESR system. The Trade Unions confirm that they will recommend this approach as a preferable alternative to taking forward further legal claims in relation to the inclusion of overtime or additional basic pay in holiday pay calculations under paragraph 13.9 of AfC and/or the Working Time Directive and/or the Working Time Regulations 1998.
- 7.2. It is the aim of the parties that existing and ongoing claims in either the Employment Tribunal or the County or High Court shall be resolved at a local level in relation to the inclusion of overtime or additional basic pay in holiday pay calculations in line with guidance set out in the Collective Agreed Framework in relation to Annual Leave Payments.
- 7.3. This Agreement does not preclude an individual from bringing a claim in respect of pay during annual leave but by signing this Agreement, the parties recognise this is the best solution to the interim challenge of correctly accounting for annual leave accrued in respect of overtime or additional basic pay. Nothing in this Agreement would limit or prevent a Trade Union from providing support or assistance to its members but there is an expectation that the Trade Unions will consider the overall economic benefit of claims which challenge this Agreement with an expectation that claims would be likely to be considered without merit.

DATE: 19th October 2021

SIGNED BY:

**Daren Mochrie,
CEO NWAS, Chair of AACE**

**Colm Porter,
National Officer Unison**

**Barry Hutchinson,
National Officer RCN**

**Colenzo Jarrett-Thorpe,
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