

**TITLE OF REPORT: Term Time Only Non-Teaching Staff**

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**Purpose of the Report**

1. The purpose of this report is to inform Schools Forums of the implications of implementing the February 2019 amendment to Part 4 of the Green Book introducing guidance on the employment of term time only employees.

**Background**

2. Currently, holiday entitlement is calculated on a pro rata basis based on the number of hours and weeks an employee is required to work per year. As term-time only employees work 39 weeks per year, they only accrue holiday for these weeks. Therefore, they do not receive the statutory minimum of 5.6 weeks holiday per year that a full year employee accrues.
3. Recent caselaw (The Harper Trust v. Brazel) refers to a term-time only employee claiming that she must receive the statutory minimum holidays in accordance with the Working Time Regulations and the pro rata of holiday entitlement to 39 weeks is incorrect. The Court of Appeal agreed with the employee and stated that the Working Time Regulations do not provide for pro-rating of holiday for any employee who works part year.
4. The case went to appeal at the Supreme Court in November 2021 and the judgement was issued 20 July 2022 which unanimously supported the earlier decisions.
5. The implication of the judgement is that the term time only calculation for all term time only employees will need to be amended positively to recognise that leave cannot be pro-rata'd for part year working. The Council will be calculating the individual implications and there will be liability for backdating .
6. The Council together with maintained schools made a provision for this outcome but until the individual calculations for the employees involved have been carried out it is not yet known if the provision will be sufficient for the costs associated with the judgement.
7. HR, Payroll and Finance are currently working through the implications and further detail will be provided when they are known.

**Proposal**

8. It is proposed that Schools Forum notes the content of the report and that further reports will be brought to Schools Forum when more detail is known.

## **Recommendations**

9. It is recommended that Schools Forum notes the contents of the report and the judgement made by the Supreme Court.

### **For the following reasons:**

To inform Schools Forum of the current situation re term time only non-teaching staff.

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