

EAST HERTS COUNCIL

LOCAL JOINT PANEL – 17 JUNE 2010

REPORT BY SECRETARY TO THE EMPLOYER'S SIDE

EXPENSES POLICY

WARD(S) AFFECTED: NONE

Purpose/Summary of Report

To approve the new Expenses Policy

<u>RECOMMENDATION FOR LOCAL JOINT PANEL :</u>	
(A)	That the new Expenses Policy be approved;
(B)	That the Policy includes provision to pay for journeys from home to normal work base but only where the employee would not have been expected to make those journeys e.g. call out on a non-working day or requiring a repeat journey on a working day. Such payments will be subject to tax and both the employees and employers National Insurance; and
(C)	That the Policy continues to reimburse only for additional miles where it involves home to work travel to other than the normal work place.

1.0 Background

- 1.1 A recent review of expenses claimed at the Council found a number of inconsistencies in the way that employees claim and what they claim for. As such, it was decided that a published Expenses Policy would ensure that the reimbursement of payments for expenses is carried out in a fair and consistent manner across the Council, based on business need. Having a published policy is also important to enable the Council to comply fully with Equal Pay legislation.

2.0 Report

- 2.1 Please see Essential Reference Paper 'C' for the new Expenses Policy. The policy covers what employees can claim for, as well as guidelines on how to claim business mileage and expenses.
- 2.2 Consultation has taken place with Unison. Once approved, the revised policies will go to the Local Joint Panel and then the Human Resources Committee.
- 2.3 During consultation, Unison raised the issue of how mileage should be claimed when officers attend call outs out of normal working hours, e.g. as part of standby duties. They did not believe the policy made provision for this particular situation. Where the officer does not attend their usual workplace, it was confirmed with Unison that this would class as a 'temporary workplace' under HM Revenue and Custom (HMRC) guidelines and therefore the employee is entitled to tax relief on the full journey. However, the Council has always operated a system known as the triangle system which involves deducting an employee's normal home to office mileage from their journey to the temporary workplace. This is the case for journeys both during the day and out of hours where the employee has already attended work that day. HMRC have confirmed that they ceased this system some time ago and so the Council is not currently conforming to HMRC guidelines. Please see Essential Reference Paper 'B' for HRMC guidance.
- 2.4 Unison are not in agreement with the triangle approach for out of hours journeys and believe that employees have always been able to claim all mileage relating to visits out of hours as they are over and above their normal home to office mileage. They feel it would be unreasonable if staff have to deduct their normal mileage each time. Payroll confirmed that it is still Council practice to deduct home to office mileage for a journey to a temporary workplace and this can be identified on some officer's claims. However it is not possible to check whether all employees adopt this practice.
- 2.5 The proposed policy on home to work travel is to pay for all mileage that is additional to normal commuting no matter how that additional mileage arises or the timing of the journey.

3.0 Implications/Consultations

- 3.1 Information on any corporate issues and consultation associated with this report can be found within Essential Reference Paper 'A'.

Background Papers: None

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ESSENTIAL REFERENCE PAPER 'A'

Contribution to the Council's Corporate Priorities/ Objectives:	Fit for purpose, services fit for you <i>Deliver customer focused services by maintaining and developing a well managed and publicly accountable organisation.</i>
Consultation:	Consultation has taken place with Unison and Heads of Service and the policies have been approved by CMT.
Legal:	None.
Financial:	None.
Human Resource:	None.
Risk Management:	None.

HMRC Guidance on Ordinary Commuting and Private Travel

An employee cannot have relief for the cost of a journey which is ordinary commuting or private travel.

What is ordinary commuting?

For most employees, ordinary commuting is the journey they make most days between their home and their permanent workplace. However, for some employees the position is more complicated. The term 'ordinary commuting' means any travel between a permanent workplace and home, or any other place which is **not** a workplace. A workplace is a place where the employee's attendance is necessary for the performance of the duties of that employment.

So, in general, there is no relief for the cost of travel between an employee's permanent workplace and

- an employee's home, or
- any other place the employee visits for non-work reasons; or
- any place where the employee performs the duties of another job.

Any journey between an employee's permanent workplace and home, or any other place where the employee's attendance is not necessary for the duties of that employment, is ordinary commuting - for which no relief is due.

Example

Dermot's employer sometimes requires him to attend his permanent workplace outside normal working hours - for example, at the weekend. This means he incurs extra costs on bus fares, the cost of meals eaten at his desk and sometimes even the cost of overnight accommodation near his workplace. No relief is available for any of this expenditure because all journeys between home and his permanent workplace are ordinary commuting. It makes no difference that Dermot's employer requires him to make the journeys or that they are made outside his normal working hours.

An employee cannot turn what is really an ordinary commuting journey into a business journey simply by arranging a business appointment somewhere on the way just to get relief. To get relief the employee must be able to show that the attendance at the particular place on that occasion was necessary - in a real sense - for the performance of the duties of that employment and was not just a matter of personal convenience.

Similarly, an employer cannot turn an ordinary commuting journey into a business journey by requiring an employee to stop off on the way to carry out business tasks such as making phone calls.

Where someone other than the employee pays or provides for their ordinary commuting (by reimbursing the costs, by paying directly for the travel or by providing travel facilities) and this arises from or by reason of the employment, the payment or provision is taxable. Reimbursements must be included as gross pay for PAYE purposes. All such payments and benefits should be reported on form P11D. The tax charge arises irrespective of whether the payment or provision is made by the employer or by a third party.

There is an exemption for certain benefits provided through a travel plan. A travel plan is a package of practical measures designed to reduce car use for journeys to and from work,

and for business travel. Travel Plans are put together by employers, and can be adapted to suit the particular needs of individual sites.

Examples of what could be included in a travel plan include:

- a works bus provided by an employer that is available to all employees generally to transport them to and from work;
- cycles or cycling safety equipment.

Permanent workplace

It is usually clear whether or not a place is an employee's permanent workplace (and, therefore, whether a journey to that place is ordinary commuting). A place where an employee works is a permanent workplace if he or she attends it **regularly** for the performance of the duties of the employment. But it will not be a permanent workplace if it is a temporary workplace. A temporary workplace is somewhere the employee goes only to perform a task of **limited duration** or for a **temporary purpose**.

Regular attendance at a workplace

An employee attends a permanent workplace if the attendance is frequent, follows a pattern, or it is the place the employee usually attends for all or almost all of the period for which he or she holds or is likely to hold that employment. The proportion of an employee's working time spent at a particular workplace is a factor in determining whether or not it is treated as a permanent workplace. But it is not the only factor. Even if the employee attends the workplace only on one or two days a week, if it is on a regular basis, the workplace may still be a permanent workplace.

Temporary workplace - Attendance for a limited duration or temporary purpose

A place is a temporary workplace if an employee goes there only to perform a task of limited duration or for a temporary purpose. So even where an employee attends a workplace regularly, it will be a temporary workplace and, therefore, not a permanent workplace if the employee attends for **the purpose of performing a task of limited duration or other temporary purpose**.

Limited duration: the 24 month rule

A place which an employee attends for the purpose of performing a task of limited duration or for some other temporary purpose is a temporary workplace. But there is a special rule which prevents a workplace being a temporary workplace where an employee attends it in the course of a period of continuous work which lasts, or is likely to last, more than 24 months.

A period of continuous work is a period of work throughout which the duties of the employment are performed to a significant extent at that place. For the purposes of operating this rule we regard duties as performed to a significant extent at any workplace if an employee spends 40% or more of their working time at that place.

The test is whether the employee has spent, or is likely to spend, 40% or more of their working time at that particular workplace over a period of more than 24 months. Where that is the case the workplace is a permanent workplace so travel between there and home is ordinary commuting for which there is no relief.

Example

Doris has worked for five years at her employer's head office in Warrington. She is sent by her employer to perform duties at a branch office in Wigan for 18 months. Relief is available for the full cost of Doris's travel between home and the temporary workplace in Wigan.