

Prepared by: Jonny Richardson Glenn Date: 14th July 2020

Agenda no: 6d

Purpose of the paper

For Discussion and Approval

Background and context

COVID-19 has presented issues to HM, and all organisations, in relation to the taking of leave during the relevant leave year.

Where are we now?

Healthy Minds has 31 employees currently, with 4 more to be recruited (2 x Safespace, 1 peer support worker, 1 marketing & communications officer): we will soon have 35 employees. Only 1 employee (Christine White, housekeeper on 4 hours per week) has been furloughed during lockdown on the basis that she cannot perform her job.

Healthy Minds standard employment contract gives everyone 33 days annual leave, including 8 statutory holidays (bank holidays); as the majority of staff are part-time, this is awarded on a pro-rata basis. Contracts also state:

Leave entitlement renews on the anniversary of your start date and, unless there are exceptional circumstances agreed with your line manager and/ or Healthy Minds Board, unused leave may not be carried over to the next year.

Informally, we have generally permitted leave to be carried over: up to 5 days approved by team leaders, with over 5 days on a case-by-case basis, approved by chief officer.

During lockdown, we have taken the stance of encouraging people to take annual leave to have a break, although people clearly cannot travel for a holiday. This has led some to feel that they would be better off 'saving' leave until they can make fuller use of holiday entitlement.

What are the key issues?

The central issue is that accrued leave may affect our ability to deliver services post-lockdown if lots of staff take leave when restrictions are lifted.

I have consulted guidance from gov.uk, Croner HR consultancy via NCVO and Cranfield Trust, from which the following summary is taken:

- Holiday, under EU law, has a health and safety objective, being to provide a break from work, rest and relaxation. Additionally, given no one is able to travel and holiday and there's a restricted ability to have rest and relaxation in a lockdown, a good employer

would reflect on whether to require employees to take holiday during a lockdown, whether they're on furlough or working.

- If an employer requires a worker to take holiday they should consider whether any restrictions the worker is under, such as the need to socially distance or self-isolate, would prevent the worker from resting, relaxing and enjoying leisure time, which is the fundamental purpose of holiday.
- Employers have legal obligations to inform employees about their holiday entitlement and to give an effective opportunity to take it.
- It will not be consistent with employer legal obligations in some instances to compel workers to take annual leave during 2020 and a carry over would be a legal right in many (but not all) instances. Their personal circumstances and whether it's feasible to enjoy rest and relaxation are also relevant.
- Further still, the government has introduced new legislation in the Working Time (Coronavirus) Amendment Regulations 2020. Workers are entitled to carry over the core four weeks leave under the Working Time Directive for two holiday years.
- The simplest option and best for employee relations would be to allow a carry over where employees reasonably request this.

Some other organisations in the sector have required staff to discharge annual leave entitlement during lockdown. I do not feel this is in the best interests of staff and is not in keeping with the spirit of Healthy Minds' practice, which is to be a generous and flexible employer that considers staff wellbeing as a paramount concern.

My basic recommendation is, therefore, that we allow leave to be carried over, spread over the next two leave years.

But this is not straightforward. Given the nature of funding, some staff may not have two further years' employment guaranteed. We have an issue here of staff who may have accumulated leave that could have a significant impact when their contract ends. Leave not taken at the time of departure is usually paid within the employee's final salary payment.

From gov.uk: **Payment in lieu for carried leave**

Carried leave is still subject to the usual rules around payment in lieu. An employer must facilitate the worker taking their annual leave and not replace it with a financial payment (known as payment in lieu).

However, if the worker leaves employment, the employer must pay the worker for any untaken leave. This will include the carried leave under the coronavirus exemption, along with any leave that the worker has accrued in the relevant leave year.

We have obligations as an employer to both preserve and give people the opportunity to take annual leave entitlement.

Another consideration is recognition and reward for staff who have remained at work in difficult times. The staff team have shown a degree of commitment and flexibility in

keeping services going, and we ought to take this into account in decision-making. Whilst we can take a hard-line stance in many respects – we could, for example, impose restrictions on leave to ensure sufficient capacity – this feels to go “against the grain” when we could instead recognise the extra efforts staff have made to keep everything running.

What is asked of trustees?

Trustees are asked to consider the following proposed actions:

- Communicate agreement that annual leave will be carried over for a period of up to two years;
- Audit annual leave entitlement to date;
- Audit anticipated contract end dates to inform plans to manage annual leave for individuals, with a view to ensuring that as much leave as possible is taken prior to end date.

Finance

There is a financial risk in relation to payment to a worker when leaving employment, for any untaken leave.

Recommendation

The board is asked to approve the proposed actions.