
Decision Maker: **GENERAL PURPOSES AND LICENCING COMMITTEE**

Date: **14 JULY 2015**

Decision Type: Urgent Non-Executive Non-Key

Title: **SHARED PARENTAL LEAVE POLICY**

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Chief Officer: Charles Obazuaye, Director of Human Resources

Ward: N/A Boroughwide

1. Reason for report

- 1.1 The Shared Parental Leave Regulations are a new legal entitlement for eligible parents of babies that were due, or children placed for adoption, on or after the 5th April 2015. The Regulations provide an opportunity for parents to take advantage of additional flexibility in the way they choose to care for a new arrival to the family. All eligible employees have a statutory right to take Shared Parental Leave (SPL). In addition, subject to meeting specific eligibility criteria, there may be an entitlement to some Shared Parental Pay (ShPP).
- 1.2 This report provides details of the Regulations and seeks Members approval of a Council Policy to ensure that the Council discharges its statutory duties as an employer and that applications for SPL and ShPP are processed consistently and equitably.
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2. **RECOMMENDATION(S)**

- 2.1 **That Members agree the Shared Parental Leave policy in respect of all staff employed by the Council and Local Authority including those staff in Community and Voluntary Controlled maintained schools.**

Corporate Policy

1. Policy Status: New policy.
 2. BBB Priority: Excellent Council.
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Financial

1. Cost of proposal: N/A
 2. Ongoing costs: N/A.
 3. Budget head/performance centre: N/A
 4. Total current budget for this head: £N/A
 5. Source of funding: N/A
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Staff

1. Number of staff (current and additional): The policy will affect all staff employed by the Council
 2. If from existing staff resources, number of staff hours: N/A
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Legal

1. Legal Requirement: Statutory requirement. The Shared Parental Leave Regulations came into force in December 2014.
 2. Call-in: Call-in is not applicable.
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected):
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? N/A.
2. Summary of Ward Councillors comments: N/A

3. COMMENTARY

- 3.1 The Shared Parental Leave Regulations are a new legal entitlement for eligible parents of babies that were due, or children placed for adoption, on or after the 5th April 2015. The Regulations provide an opportunity for parents to take advantage of additional flexibility in the way they choose to care for a new arrival to the family. All eligible employees have a statutory right to take Shared Parental Leave (SPL). In addition, subject to meeting specific eligibility criteria, there may be an entitlement to some Shared Parental Pay (ShPP).
- 3.2 In order to ensure that requests for Shared Parental Leave are managed fairly and consistently Human Resources has developed a draft Council Policy and accompanying Guidance for managers and staff (Appendix A). The Policy details the statutory entitlements for staff and the guidance provides practical support and advice to managers in dealing with requests for SPL. A separate process document also assists staff in determining whether they are eligible for SPL and what action they need to take to make a formal request for SPL. The Council's proposed position is similar to the position already adopted by other local authorities.
- #### 3.3 Entitlement SPL and ShPP
- 3.4 SPL can only be used by two people:
- The mother/adopter **and**
 - **One** of the following:
 - The father of the child (in the case of birth) **or**
 - The spouse, civil partner or partner of the child's mother/adopter.
 - Both parents must share the main responsibility for the care of the child at the time of birth or in the case of adoption the time of the placement.
 - Employee's seeking to take SPL must satisfy specific eligibility criteria and their partner must meet the separate "employment and earnings test".
- 3.5 Following a mandatory two week period of maternity/adoption leave a mother can curtail her leave and her spouse or partner can exercise their right to share the remaining leave entitlement and where eligible statutory maternity pay.
- 3.6 Employees can notify their entitlement to apply for shared parental leave in two ways either as a continuous period of leave or discontinuous. An employer has the right to refuse a discontinuous period of leave but requests for continuous periods of leave must be granted. Managers will make decisions regarding granting requests for leave taking into account the individual's wishes and the needs of the service. Before refusing an application for leave managers will need to consult with Human Resources to ensure that the grounds for refusal are not discriminatory.
- 3.7 Whilst on SPL all terms and conditions of employment remain unaffected and annual leave continues to accrue. Individuals returning from a period of SPL have the right to return to a post on no less favourable terms and conditions that they were employed on before commencing SPL.

3.8 Consultation

- 3.9 The draft policy and guidance and process documents were issued to Trade Union and Departmental representatives for a formal period of consultation which commenced on the 19th May 2015 and concluded on the 19th June 2015. During the consultation period 2 consultation meetings were held.

UNITE, UNISON and NASUWT attended and one departmental representative.

Detailed in the table below is a summary of the issues raised and management's response.

Issue Raised	Management Response
Ensuring that Trade Unions are briefed on the application of the policy as well as managers	Information will be disseminated to managers by means of managers brief. Trade Unions will be provided with the final policy and may seek clarity on its application as required. Departmental Representatives will be able to access a copy of the policy on One Bromley and will be able to seek clarity on its application through Human Resources.
Staff's entitlement to SPL to be publicised	The policy will be made available on One Bromley and consideration given to sending a separate communication to all staff by means of email.
Consideration of the legal implications of paying a higher rate of maternity pay compared to SPL and the equality implications of this if both partners employed by the same employer	<p>It is for employers to decide whether or not to enhance contractual pay to employees on shared parental leave, where they already pay enhanced maternity pay. There is no statutory provision requiring them to do so. However, when making such a decision, it is important to avoid any discrimination.</p> <p>The Council already operates an enhanced maternity pay scheme. If an employer pays enhanced pay to employees on maternity leave, but not to employees on shared parental leave, there is a risk of sex discrimination claims from male employees who take shared parental leave who consider that they are being treated less favourably than female employees on maternity leave. However, it may be possible to defend a sex discrimination claim on the ground that a male employee on shared parental leave is treated no less favourably than a female employee on shared parental leave.</p> <p>It is not yet known how tribunals and courts will approach the question of who is the correct comparator in such a case (i.e. whether the comparator should be an employee on</p>

	<p>maternity leave or a female employee on shared parental leave). There is also a question over whether or not a policy of enhancing only maternity pay might be allowed under provisions allowing "special treatment afforded to a woman in connection with pregnancy or childbirth" (s.13(6)(b) of the Equality Act 2010).</p> <p>Employers that seek to defend an indirect sex discrimination claim by justifying a policy of enhancing maternity pay but not shared parental pay will need evidence to show that the policy is a proportionate means of achieving a legitimate aim. In the employment tribunal case of <i>Shuter v Ford Motor Company Ltd ET/3203504/2013</i>, the employer was able to justify its policy of enhancing maternity pay but not additional paternity pay, as it had clear evidence that the aim of the policy was to attract and retain female employees, and that female representation in the workforce had improved.</p> <p>A policy of enhancing maternity pay, but not shared parental pay, would deter female employees from curtailing their maternity leave and opting to take shared parental leave, as they would be giving up their entitlement to enhanced pay. There could be a risk of a claim from an employee who considers that she has been subjected to a detriment for choosing to take shared parental leave. Case law will be required before the likelihood of such a claim succeeding can be judged.</p> <p>If consideration was given to enhancing pay to employees on shared parental leave account would need to be taken of the fact that shared parental leave can be taken in discontinuous periods. The Council would have to decide whether, for example, it will enhance pay for all periods of shared parental leave, for only the first period taken by an employee or for only a certain number of weeks. It would also need to consider whether or not an employee who has already benefited from enhanced maternity pay will be entitled to a further period of enhanced pay if she swaps to shared parental leave.</p> <p>The draft policy is consistent with ACAS guidance and is based on statutory entitlement only. In the event that case law requires a</p>
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	review of this position a further report will be brought to Members for their consideration.
Use of data obtained from other sources and data protection	The Council will ensure that it complies with the requirements of the data protection act and will only request and retain information that is relevant and necessary to determine entitlement to SPL and ShPP.

3.10 Fraudulent Claims

Human Resources will administer SPL including where appropriate obtaining evidence of eligibility to SPL from a spouses/partner's employer and proof of birth of the child. The policy details the action that the Council will take in the event that it is discovered that a fraudulent claim for either SPL or ShPP has been made which will involve notifying HMRC and where appropriate may give rise to disciplinary action.

4 FINANCIAL IMPLICATIONS

- 4.1 ShPP will be paid at the statutory rate only. It is difficult to quantify how many staff will apply for SPL and ShPP however at the time of preparing this report no formal notifications had been received. In the past 12 months 56 staff have taken maternity leave (excluding school based staff), at a cost of £285,488.86.
- 4.2 This was made up of £211,398.66 statutory maternity pay costs, and £74,090.20 enhanced maternity pay costs. The statutory element is funded 92% by government, so the total cost to the Council was £91,002.10 over the last 12 months. These costs were charged to the relevant revenue budgets for managers to contain within their approved budget.
- 4.3 Shared Parental Pay would also be funded 92% by government, and it is proposed that the remaining 8% would be charged to revenue budgets the same as with maternity pay.

5 LEGAL AND PERSONNEL IMPLICATIONS

- 5.1 SPL Parental Leave is a statutory entitlement and therefore the Council has no discretion other than to grant SPL and ShPP where eligibility criteria is met.
- 5.2 The Council already operates a range of flexible working practices and other special leave provisions including maternity, paternity and adoption. This policy will therefore sit alongside these other policies and is consistent with the Council's REAL Leadership values.
- 5.3 Human Resources will monitor the application of the policy to ensure that it does not impact adversely and unlawfully on any part of the Council's workforce, continues to reflect statutory requirements and meets business needs.

Non-Applicable Sections:	
Background Documents: (Access via Contact Officer)	N/A