

**Subject:** Adoption & Surrogacy Policy  
**Date of Meeting:** 10 January 2012  
**Report of:** Strategic Director, Resources  
**Contact Officer: Name:** Charlotte Thomas **Tel:** 29-1290  
**E-mail:** charlotte.thomas@brighton-hove.gov.uk  
**Wards Affected:** All

### FOR GENERAL RELEASE

#### 1 SUMMARY

- 1.1 This report recommends bringing our Adoption Policy into line with our occupational maternity provisions and extends the provisions to surrogate parents.

#### 2 RECOMMENDATIONS:

- 2.1 It is proposed that the Adoption & Surrogacy Policy for council employees is brought into line with the council's Maternity Policy in relation to paid leave. Governance Committee are asked to agree the amended Adoption & Surrogacy Policy set out at Appendix One.
- 2.2 A new provision is proposed allowing access to the Adoption & Surrogacy Policy for an employee who becomes the legal parent of a surrogate child. Governance Committee are asked to agree this proposal.
- 2.3 It is proposed that five days paid leave is granted for the adoption preparation and assessment process.
- 2.4 Governance Committee are asked to agree that the proposals are backdated to 1 January 2012 to enable those employees who are close to being matched with a child to benefit from the policy.

#### 3. RELEVANT BACKGROUND INFORMATION

- 3.1 The amount of adoption leave available to NJC staff currently mirrors maternity leave arrangements. However, the amount of adoption pay for this staff group differs according to the age of the child. All staff receive pay equivalent to the maternity pay entitlement for NJC staff if the child is less than one year of age. However, the amount received for adopting a child above one year of age and below 18 years is less generous. Therefore it is proposed to bring the adoption and maternity pay rates in line with each other.
- 3.2 Historically, teachers have received adoption leave and pay in line with NJC staff. However, this means that a teacher wishing to adopt would receive less pay than a

colleague on maternity leave. Therefore, the proposed revised policy (see appendix one) brings the adoption pay entitlement in line with maternity provisions.

- 3.3 There is no statutory provision for adoption leave or pay for a parent of a surrogate baby. However, it is proposed to provide adoption leave and adoption pay up to a maximum of 18 weeks subject to the employee providing the necessary documentation that confirms them as the legal parent.
- 3.4 Information from the BHCC Adoption & Permanence Team about the adoption assessment process has indicated that on average the process of placement for adoption takes from eight months to one year. There is preparation training averaging four days, 10 – 12 appointments over six months which are two hours long on average and some of these can be in the evening. Finally there is a half day panel meeting.

### 3.5 **Legislative background**

The Employment Act 2002 introduced a statutory right for employees to take time off work to care for a child newly placed for adoption, i.e. up to 26 weeks' Ordinary Adoption Leave (OAL), immediately followed by up to 26 weeks' Additional Adoption Leave (AAL).

The Work and Families Act 2006 extended the entitlement to Statutory Adoption Pay (SAP) from 26 to 39 weeks for qualifying employees who have a child placed for adoption on, or after, 1 April 2007.

Legislation after this date has further cemented the parallels between maternity and adoption statutory provisions. For example, the 'Additional Paternity Leave Regulations 2010'.

There remain some differences between maternity leave and adoption leave, notably around qualifying criteria for leave and the amount of statutory pay/allowance, but this is currently being addressed through the Private Members Bill on Adoption Leave and Pay which is before parliament, but at the very early stages of reading.

## 4 **CONSULTATION**

- 4.1 Consultation has taken place with the council trade unions. The original proposal for three days paid leave was increased to five days as a result of consultation. Colleagues welcomed the policy and the fact that it would be operational from 1 January 2012 (subject to Governance Committee approval). The policy has been circulated to the staff workers fora following a discussion at the HR equalities group. Headteachers have been consulted through the Headteachers' Steering Group. The Wave HR pages have announced to staff that the Adoption policy is under review.

## 5 FINANCIAL & OTHER IMPLICATIONS

- 5.1 The take up of Adoption leave/pay is relatively low e.g. for the period July 2009 to October 2011 only eight employees took adoption leave.
- 5.2 Statutory Adoption Pay (SAP) is recoverable by the council at a rate of 92%. This equated to £17,302 for the last financial year, with this amount being returned to service/school budgets through the ledger interface. In comparison, £1,051,224 was reclaimed in Statutory Maternity Pay (SMP) and returned to service/school budgets. Using these figures the money spent by the council on adoption pay represents approximately 0.6% of the total spend on maternity pay. Therefore the small increases suggested in this paper are insignificant in whole council budget terms.

*Finance Officer Consulted: Ann Silley*

*Date: 19<sup>th</sup> December 2011*

### Legal Implications:

- 5.3 There are no legal implications as the changes to the Adoption Policy are in line with legal requirements and the new proposal to incorporate surrogacy exceeds the legal requirements.

*Lawyer Consulted: Sarita Arthur-Crow*

*Date: 20 December 2011*

### Equalities Implications:

- 5.4 The Adoption and Surrogacy policy is open to both men and women.

### Sustainability Implications:

- 5.5 None.

### Crime & Disorder Implications:

- 5.6 None.

### Risk & Opportunity Management Implications:

- 5.7 None.

### Public Health Implications:

- 5.8 None.

### Corporate / Citywide Implications

- 5.9 None..

## **SUPPORTING DOCUMENTATION**

**Appendices:** Adoption & Surrogacy policy

## **Occupational Adoption & Surrogacy Policy**

**This policy should be read in conjunction with the Adoption 'Information Packs' available to staff on the Wave.**

### **1. Introduction**

The occupational adoption policy applies to those employees adopting a child through an official adoption agency, regardless of the number of hours worked per week.

Adoption leave/pay is open to employees of either gender but only ONE adoptive parent is entitled to receive this, regardless of whether they work for different employers.

Adoption leave does not apply to special guardians, foster carers or step parents adopting a child outside of an adoption agency framework.

#### Surrogacy

**Refer to part 12 of this policy.**

### **2. Initial obligations on the employee intending to adopt a child**

Once an employee has made an application to become an adoptive parent and they are notified that they will be assessed by the Local Authority/Adoption Agency, they should inform their manager/headteacher so that appropriate planning for the planned adoption leave can begin.

An employee shall notify the Council/School, in writing, at least 28 days before his/her absence begins, but within 7 days of being notified of a match:

- that he/she intends to adopt a child
- of the expected date of placement
- of the date of the beginning of his/her absence

A matching certificate from the UK adoption agency must be provided as proof of entitlement.

### **3. Adoption Assessment Process**

#### Time off for the assessment process.

Before an employee is approved to be an adoptive parent they are required to go through an assessment process consisting of training, meetings and observations. There is no legal entitlement to paid time off for any part of the adoption assessment process, however, where an employee is applying to become an approved adopter 5 days leave with pay is granted to attend meetings and training as part of the preparation and assessment process. Outside of this, meetings and training should be arranged to take place outside of work time. If this is not possible and where business/service needs allow, time off should be considered within any flexible working/leave of absence arrangement agreed between the manager/headteacher and the employee.

Any time off must be agreed in advance, with confirmation of the course/meeting the employee is required to attend being provided on request.

### **4. Adoption Leave Entitlement**

- a) If an employee has 26 weeks continuous service with the Council/School by the end of the week in which he/she is notified of being matched with a child, then they are entitled to 26 weeks ordinary adoption leave followed immediately by 26 weeks additional adoption leave, giving a total of 52 weeks' continuous leave, the 'adoption leave period'.
- b) Adoption leave shall commence from the date of placement, or from a predetermined date 14 days before the placement date, but no later than the placement date itself.
- c) When adopting from abroad the earliest date adoption leave may start is from the date the child enters Great Britain and the latest date it can start is 28 days after the child has entered Great Britain.

Within 28 days of receipt of the notification, the Council/School will write to the employee informing them of the last day of their adoption leave and the expected date of their return.

**5a. Adoption Pay for Council NJC staff and Support Staff Working in Schools**

Payments for employees who have less than one year's continuous local government service at the week of matching shall be the employee's entitlement to Statutory Adoption Pay (SAP) where eligible.

Payments for employees who have completed one year's continuous local government service at the week of matching shall be as follows:

- i. For the first six weeks of absence an employee shall be entitled to 9/10ths of a week's pay, offset against payments made by way of SAP.
- ii. An employee who declares in writing that he/she intends to return to work will for the subsequent 12 weeks absence receive half a week's pay plus SAP, where eligible, without deduction except by the extent to which the combined pay and SAP exceeds full pay. Alternatively the equivalent amount (i.e. six weeks' pay) may be paid on any other mutually agreed distribution.

For the remainder of the adoption leave period (i.e. 21 weeks) the employee will receive their entitlement to SAP where eligible.

- iii. For employees not intending to return to work, payments during their adoption leave period following the first 6 weeks will be their entitlement to SAP (i.e. 33 weeks), where eligible.
- iv. Payments made by the Council/School during adoption leave under ii above shall be made on the understanding that the employee will return to local authority/school employment for a period of at least three months, which may be varied by the Council/School on good cause being shown and, in the event of him/her not doing so, he/she shall refund the monies paid, or such part thereof, if any, as the Council/School may decide. Payments made by way of SAP are not refundable by the employee.

**5b. Adoption Pay for Teachers (reflecting national conditions of service for Teachers)**

Payments for employees who have less than one year's continuous local government service at the week of matching shall be the employee's entitlement to Statutory Adoption Pay (SAP) where eligible.

Payments for employees who have completed one year's continuous local government service at the week of matching shall be as follows:

- i. For the first four weeks of absence an employee shall be entitled to full pay, offset against payments made by way of SAP, followed by:

2 weeks at 9/10ths pay offset against payments made by way of SAP.

- ii. An employee who declares in writing that he/she intends to return to work will for the subsequent 12 weeks absence receive half a week's pay plus SAP, where eligible, without deduction except by the extent to which the combined pay and SAP exceeds full pay. Alternatively the equivalent amount (i.e. six weeks' pay) may be paid on any other mutually agreed distribution.

For the remainder of the adoption leave period (i.e. 21 weeks) the employee will receive their entitlement to SAP where eligible.

- iii. For employees not intending to return to work, payments during their adoption leave period following the first 6 weeks will be their entitlement to SAP (i.e. 33 weeks), where eligible.
- iv. Payments made by the School/Council during adoption leave under ii above shall be made on the understanding that the employee will return to local authority/school employment for a period of at least three months, which may be varied by the School/Council on good cause being shown and, in the event of him/her not doing so, he/she shall refund the monies paid, or such part thereof, if any, as the School/Council may decide. Payments made by way of SAP are not refundable by the employee.

## **6. Keeping in Touch (KIT) Days**

- a) Keeping in Touch (KIT) days are intended to facilitate a smooth return to work after adoption leave. Before going on leave, the line manager and employee should discuss and agree any voluntary arrangements for keeping in touch during the employee's absence. An employee may work for up to 10 KIT days without bringing his/her adoption leave to an end.
- b) The work can be consecutive or not, and can include training or other activities which enable the employee to keep in touch with the workplace. Working part of a day will count as a full day for these purposes. Any such work must be by agreement and neither the line manager nor the employee can insist upon it.
- c) An employee will not lose their entitlement to SAP for working a KIT day. An employee will receive their normal pay offset against any adoption payments to which the individual is entitled.

## **7. Right to Return to Work**

- a) Subject to paragraph b) the employee has a right to return to the job in which he/she was employed under his/her original contract

of employment and on terms and conditions not less favourable than those which would have been applicable to him/her if he/she had not been absent. "Job" for this purpose, means the nature of the work which he/she is employed to do and the capacity and place in which he/she is so employed.

- b) Where it is not practicable by reason of redundancy for the Council/School to permit him/her to return to work in his/her job as defined in a) above, the employee shall be entitled to be offered a suitable alternative vacancy where one exists, provided that the work to be done in that post is suitable to him/her and appropriate for him/her to do in the circumstances, and that the capacity and place in which he/she is to be employed and his/her terms and conditions of employment are not substantially less favourable to him/her than if he/she had been able to return to the job in which he/she was originally employed.
- c) Suitable alternative employment may also be offered if exceptional circumstances other than redundancy (eg. a general reorganisation), which would have occurred if the employee had not been absent, necessitate a change in the job in which he/she was employed prior to his/her absence. The work to be done should be suitable to him/her and appropriate for them to do in the circumstances and the capacity and place in which he/she is to be employed and his/her terms and conditions of employment should not be less favourable to him/her than if he/she had been able to return to the job in which he/she was originally employed.

## 8. Exercise of the Right to Return to Work

- a) Return **before** the end of the adoption leave period
  - i. An employee on adoption leave shall notify the Council/School in writing at least 21 days before the day on which he/she proposes to return if this is before the end of the adoption leave period. Where the notice given is less than 21 days, the Council/School may postpone the return to ensure 21 days' notice, but not beyond the end of the adoption leave period.
  - ii. If an employee changes his/her mind about the day he/she proposes to return, he/she must give the Council/School 21 days' notice of the new date, if this is **earlier** than the original date (see 8(a)(i) he/she notified, **or** if he/she is now proposing to return **later** than the original date, he/she must give notice of the new return date 21 days before the original return date.
- b) All employees
  - i. Where an employee is unable to return on the expected day due to sickness, the absence will be covered by the sickness scheme in the normal way.



- ii. For an employee, where, because of an interruption of work, (whether due to industrial action or some other reason) it is unreasonable to expect him/her to return on the due date, he/she may instead return when work resumes, or as soon as reasonably practicable thereafter.
- c) The employee will have the right to request flexible working arrangements.

## 9. Relationship with Sickness and Annual Leave

- a) Adoption leave will not be treated as sick leave and will not, therefore, be taken into account for the calculation of the period of entitlement to sick pay.
- b) Ordinary adoption leave and additional adoption leave shall be regarded as continuous service for the purposes of the National Joint Council's sickness and adoption schemes and annual leave. Annual leave continues to accrue during both ordinary and additional adoption leave.
- c) An employee intending to take adoption leave should, where applicable, agree with their manager or headteacher how they intend to take their annual leave as a maximum of 5 days only can be carried over to any new leave year. Annual leave may be taken before the commencement of adoption leave and/or immediately after it. Annual leave may not be taken during the adoption leave period.

## 10. Definitions

### a) **A Week's Pay**

The term "a week's pay" for employees whose remuneration for normal working hours does not vary with the amount of work done in the period, is the amount payable by the Council/School to the employee under the current contract of employment for working his/her normal hours in a week. Where there are no normal working hours, a week's pay is the average remuneration in the past 12 weeks preceding the date on which the last complete week ended, excluding any week in which no remuneration was earned.

## **11. The Wave**

Full information on Adoption is confirmed within the following, which are available on the Wave:

- Adoption Information Pack for NJC Employees and Support Staff Working in Schools
- Adoption Information Pack for Teachers

## **12. Surrogacy**

Although an employee who becomes a parent through an arrangement with a surrogate mother is not legally entitled to statutory adoption leave or pay, the Council/School will allow access to the B&H Occupational Adoption pay/ leave provisions as outlined above. Payment will be equivalent to Occupational Adoption Pay (including the equivalent payment to SAP) as outlined in paragraph 5a) or 5b) above and the arrangements are subject to the same service and return to work provisions outlined here.

All payments to the employee are subject to meeting the qualifying criteria and to providing the necessary evidence confirming parental responsibility.

There may be an entitlement to take paternity and/or parental leave, if he or she qualifies. To qualify for paternity and/or parental leave the employee must produce the Parental Order and/or birth certificate when they apply. Refer to the separate guidance on paternity/parental leave for full information.

Annual leave should be considered with agreement of the line manager or headteacher.

## **13. What happens if the placement/surrogacy arrangement is disrupted?**

In exceptional circumstances, the placement may be disrupted for one of the following reasons:

- The child is returned to the adoption agency during the adoption leave
- The child does not remain with the parent taking the leave
- The child dies during the leave period

In these situations the leave and pay (including SAP) will end 8 weeks after the end of the week in which the disruption occurred.