

EJCC briefing note – Maternity, Adoption & Surrogacy Adoption Leave policy updates & additions

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1. Introduction

1.1 The Maternity, Adoption & Surrogacy Adoption Leave (MASAL) policy was updated 12 months ago. Since the last update a number of queries of have arisen with respect points not considered in the current policy.

1.2 The MASAL policy has therefore been reviewed with respect the following points:

- **Breastfeeding in the workplace** (*Please refer to section 4 of this briefing note*)
- **Leavers due to redundancy** (*Please refer to section 5 of this briefing note*)
- **Undertaking electoral duties and pay** (*Please refer to section 6 of this briefing note*)

1.3 A light touch Equalities Impact Needs Assessment has been completed (*Please refer to section 8 of this briefing note*)

1.4. An information seeking exercise has been undertaken with various internal and external parties. However to date no formal consultation with respect the implementation or the current proposed amendments, has taken place with Employment, Legal Services or the Trade Unions. Upon receipt of feedback appropriate consultation will be implemented.

2. Purpose

To raise awareness and provide support to Managers and employees in respect of additional matters relating to employees on or returning from a period of maternity leave, adoption leave or surrogacy adoption leave.

- Leavers due to redundancy
- Pay and undertaking electoral duties
- Breastfeeding in the workplace.

3. Summary Recommendations/Outcomes required

Approval is sought to update the Maternity, Adoption & Surrogacy Adoption Leave policy as follows (*please see appendix 1*):

3.1 Breastfeeding in the workplace

3.1.1 Update Section 13.2 Nursing Mother in conjunction with Public Health, providing guidance only to breastfeeding employees, (*please see appendix 1, additional draft section 13.2.2 or appendix 2a*)

3.2 Redundancy

3.2.1 Approval is sought to update the MASAL policy, Section 12.2 – Redundancy, and 14.1 – Protection against detriment and dismissal (*please see appendix 1, pages 11- 13*).

3.3 Undertaking electoral duties

3.3.1 Approval is sought to update the following Shropshire Council policies:

- Insert an additional section entitled 'Election duties and Maternity or Adoption Pay in the MASAL policy' (*Please see appendix 1, page 13, Section 15*)
- Special Leave Policy, update section 2 Election Duties (*Please see appendix 3*)

4 Breastfeeding in the Workplace

4.2 Background information

4.1.1 Work has been undertaken by the Childhood Obesity Task & finish Group formed from Young People's Scrutiny committee, chaired by Councillor Joyce Barrow, to take on the challenge of childhood obesity in the county.

Following a presentation from Shropshire Council's Public Health colleagues on obesity in young people, four key areas were highlighted to be addressed in Shropshire, including one key area of breastfeeding.

4.1.2 The Government recommends that babies should be exclusively breastfed for the first six months, and that breastfeeding should continue until they are 12 months old.

In many cases employees returning to work after maternity leave will have stopped breastfeeding. However, some employees may still be breastfeeding at this stage, or expressing breast milk during the day to give to their baby later on - which also counts as "breastfeeding".

4.1.3. Colleagues from Public Health approached us in March with respect to making changes to the Maternity, Adoption & Surrogacy Adoption Leave & Pay policy to include additional policy statements with respect to breastfeeding at work.

4.1.4 Both ACAS and Maternity Action recommend that it is good employment practice to have a policy on breastfeeding, this view is supported by the Young People's Scrutiny committee, including a view that as a major employer in Shropshire it should be leading the way and actively demonstrating its commitment to breastfeeding employees.

4.2 Shropshire Council Context

- 4.2.1 Shropshire Council on 1 April 2015 (excluding schools based staff) employed 3,972 staff, of which 3,095 are female.

In the calendar year 2014, 63 occurrences of maternity leave were commenced by current employees, returning to work on average after 44 weeks.

Shropshire Council's current policy statement within the Health & Safety section of the Maternity, Adoption and Surrogacy Leave and Pay policy states only "that the nursing mother will need to inform her manager in writing if she intends to continue to breastfeed after returning to work. The manager will need to conduct a further risk assessment with advice from both a Health and Safety Officer and a HR Officer and in discussion with the employee."

4.3 Legality

- 4.3.1 There is no explicit statutory right to paid breaks from a job in order to breastfeed or to express for storage and later use.
- 4.3.2 Instead employers must meet their obligations to breastfeeding employees under Health & Safety, flexible working and discrimination law. Including:
- Workplace (Health, Safety and Welfare) Regulations 1992 - to provide a breastfeeding mother with a place to rest, this can be the same room provided for the woman to breastfeed or express.
 - Breastfeeding woman can make a request for flexible working if they have worked for their employer for at least 26 weeks. Employers are legally required to give the request serious consideration and can only refuse a request for good business reasons.
 - Failure to assess and take action on health and safety risks for a breastfeeding woman where the work is of a kind that could involve risks and any failure could have serious consequences for mother or baby. May be considered a breach of Management of Health and Safety at Work regulations and in addition unlawful discrimination under the Equality Act.
 - Furthermore, harassment of a breastfeeding employee or failure to take action to stop other staff members from harassing a breastfeeding employee could also be considered as unlawful discrimination under the Equality Act.

4.4 Advantages of supporting mothers to continue breastfeeding

- 4.4.1 The following are considered to be advantages of supporting mothers to continue breast feeding:
- Fewer absences

- Reduced staff turnover
- More flexible return dates
- Higher productivity and increased loyalty

4.5 Recommendation

- 4.5.1 Amend the current MASAL policy in conjunction with Public Health, providing guidance to breastfeeding employees (*please see appendix 2a*).

5 Redundancy

5.2 Background information

- 5.1.1 Shropshire Council undertook a Voluntary Redundancy programme in 2013 due to evolving technology and business process which seeks to improve the provision of services to Shropshire people, as well as economic factors. Shropshire Council continues to experience a higher level of turnover of staff due to reasons of redundancy further to the redesign of business processes and structures.

- 5.1.2 Increasingly advice is sought with respect what entitlements an employee on maternity or adoption leave has when facing dismissal due to compulsory or voluntary redundancy.

5.3 Legality

- 5.2.1 It is not unlawful to dismiss a woman whilst she is on maternity leave and normal rules of dismissal apply.

However the dismissal must not in any way be related to their pregnancy or intention to take maternity. Dismissal because of pregnancy, pregnancy related sickness, birth or maternity leave is an automatic unfair dismissal. Unlike women on maternity leave, pregnant women who have not yet started maternity leave have no special protection in a redundancy situation.

- 5.2.2 Women dismissed during their period of maternity leave are entitled to receive:

- Statutory notice pay when on maternity leave.
- Written reasons for the dismissal and to be paid for any outstanding holiday pay that has accrued during their maternity leave, up to the end of their notice period.

- 5.2.3 Women dismissed during their period of maternity leave may have the right to:

- Contractual notice pay during paid maternity leave.
- Argue they are entitled to notice pay during whole of maternity leave

5.2.4 The employer can offset statutory maternity pay against notice pay for any week of notice period where the employee is in receipt of statutory maternity pay.

5.2.5 The employer may not be entitled to offset statutory maternity pay in circumstance of pay in lieu of notice.

5.3 Current policy

5.3.1 Notice periods policy, section 2 – Statutory notice periods states "where notice is given by the employer to an employee, the employee is entitled to receive full contractual pay during the period of notice (*please see appendix 4, section 2*).

5.4 Recommendation

5.4.1 Approval is sought to update the MASAL policy, with Section 12.2 – Redundancy (*please see appendix 1, page 11- 12, section 12.2 – Redundancy*) to confirm that:

- Employees are entitled to written reasons for the dismissal and to be paid for any outstanding holiday pay that has accrued during their maternity, adoption or surrogacy adoption leave up to the end of their notice period.
- Employees subject to notice of dismissal due to reason of redundancy (**voluntary or compulsory**) are entitled to receive full pay during their notice period
- Where an employee is in receipt of statutory maternity pay (SMP) or Statutory Adoption Pay (SAP) this will be offset against the notice pay for any week in the notice period which the employee would be getting SMP or SAP.

5.4.2 Also section 14.1 – Protection against detriment and dismissal (*please see appendix 1, page 13, section 14.1*) to confirm that:

- It is not unlawful to dismiss an employee whilst on maternity, adoption or surrogacy adoption leave, however employees are protected against being subject to detriment and/or dismissal because of pregnancy, pregnancy related sickness, birth) or from taking or intending to take maternity, adoption or surrogacy adoption leave.

6 Undertaking electoral duties

6.1 Background

6.1.1 Recent elections highlighted a need to provide additional advice and guidance with respect employee's undertaking election duties whilst on maternity leave and the impact on their pay.

6.1.2 Two policies were reviewed as a result:

- Maternity, Adoption & Surrogacy Adoption Leave & Pay. Currently there is no reference to election duties.
- Special leave policy, section 2 – Election duties. States "anyone undertaking election duties as presiding officers, poll clerks or counting assistants in Police Commissioner, European, Parliamentary or Council elections, which take part during their normal working day, will be granted paid time off, up to a maximum of 7.4 hours. In the event that you have been employed to a role for the election, special leave would not be applicable" (*Please see appendix 3*)

6.2 Impact on Pay (SMP/OMP)

- 6.2.1 Employment Services confirm that HRMC regulations determine that where an employee completes election duties, the employee is not eligible for Statutory Maternity Pay (SMP) for the week in which the duties are performed.
- 6.2.2 Individual circumstances including when election duties are completed during the period of maternity leave, would determine the impact on an individual's pay.
- 6.2.3 It is considered that where an employee is in receipt of Occupational Maternity Pay (OMP), it is unlikely that the employee would benefit financially from undertaking election duties i.e. during the first 6 weeks SMP is paid at a higher rate and can on occasions equal or even exceed OMP.

6.3 Other considerations

- 6.3.1 Review and contact with additional sources including local authority policies available on the internet including Pay, Special Leave, Maternity Leave or Other Authorised Leave policies; review of the Green book; contact with West Midlands Employers (WME) have not identified any reference or additional advice with respect to Election Duties and Occupational Maternity Pay.

6.4 Recommendation

6.4.1 Approval is sought to update the following Shropshire Council policies:

- Insert an additional section entitled 'Election duties and Maternity Pay in the Maternity, Adoption & Surrogacy Adoption policy' (*Please see appendix 1, page 13 Section 15*)
- Special Leave Policy, update section 2 Election Duties (*Please see appendix 3, section 2*)

With the following update:

"Employees who undertake election duties during maternity or adoption leave are not entitled to receive SMP or SAP for the week in which duties were undertaken.

It is recommended that before undertaking election duties during maternity or adoption leave, due to individual circumstances, employees should contact Employment Services to better understand the impact on their pay."

7. Equalities Impact Needs Assessment

7.1 Breastfeeding at work

4.1.1 Consideration has been given to Equality Act 2010 including:

- Section 18, Pregnancy and maternity discrimination: work cases (*Please see appendix 5a*).
- Section 19, Indirect discrimination (*Please see appendix 5b*)
(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.

The relevant protected characteristic in this case potentially being sex.

7.1.2 Also, Shropshire Council's statement with respect diversity in employment (*Please see appendix 5c*) which details that an employee can expect to:

- Be paid fairly and equitably.
- Not be unfairly discriminated against.
- Be supported by fair and clear employment policies and procedures which reflect this.

7.2 Redundancy

7.2.1 Consideration has been given to an employee's entitlement to notice pay as stated within Section 2 of Shropshire Council's, Notice Periods policy which states "where notice is given by the employer to an employee, the employee is entitled to receive full contractual pay during the period of notice pay (*Please see appendix 3, section 2*).

7.2.2 That anything less than an amount equivalent to full contractual pay paid to an employee during her maternity or adoption leave and under notice of dismissal would be in conflict with section 2 of the Notice Periods policy and equalities legislation.

7.3 Undertaking electoral duties

Consideration has been given:

- 7.3.1 That in the circumstance of an employee during maternity or adoption leave, completing election duties that they may potentially suffer a financial detriment (financial detriment would be depend on individual circumstances). When compared to another employee completing elections duties who is not on maternity or adoption leave and has been granted paid leave to undertake election duties which as a result they may earn an additional income.
- 7.3.2 The rules governing an employee's eligibility to OMP/SMP following completion of election duties are determined by HM Revenue & Customs (HMRC). Therefore outside of the control of Shropshire Council.
- 7.3.3 The granting of paid leave would indicate Shropshire Council's intention to support and promote attendance of Election duties, an ethos associated with public duties. However this would appear to be potentially in conflict with HMRC requirements associated with Statutory Maternity Pay and completion of election duties where the employee is on maternity leave.

8.0 Supporting documents

Appendix 1 – Draft amended 'Maternity, Adoption & Surrogacy Adoption Leave policy'

Appendix 2a – Proposed amendment to the current Maternity, Adoption and Surrogacy Pay & Leave Policy received from Public Health colleagues.

Appendix 3 – Draft amended Special Leave policy.

Appendix 4 – Notice Periods policy.

Appendix 5a – Section 18, Pregnancy and maternity discrimination: work cases.

Appendix 5b – Section 19, Indirect discrimination.

Appendix 5c – Shropshire Council statement – diversity in employment.

Employee Handbook

Maternity, Adoption and Surrogacy Adoption Leave Policy

1.0 PURPOSE

1.1 The purpose of the maternity, adoption and surrogacy adoption leave policy is to:

- Assist with the management of leave for those who are pregnant, seeking to adopt a child or have a surrogate baby
- Provide information about statutory rights

Provide information about additional benefits the Council provides in addition to its statutory obligations.

1.2 The Maternity check list for Line Managers (appendix 1) provides a step by step guide. Please refer to the Managers Maternity pack.

1.3 The Adoption checklist for Line Managers (appendix 1) provides a step by step guide. Please refer to the Managers Adoption & Surrogacy Adoption pack.

1.3 Additional policies & documents which employees may also wish to refer to include:

- Maternity checklist for Managers
- Adoption & Surrogacy Adoption checklist for managers
- Equality and Diversity
- Paternity Leave
- Parental Leave
- Flexible Working Framework
- Taking unexpected leave
- Annual Leave & Public Holidays
- Caring about Sickness

Appendix 1

2.0 WHO THIS SCHEME APPLIES TO

This maternity, adoption and surrogacy adoption leave policy applies to all employees of Shropshire Council whose employment falls within the scope of the NJC for the Local Government Service

Staff employed by schools should refer to the Schools Personnel Handbook.

For the purpose of this policy, employees are as defined in Section 230 of the Employment Rights Act 1996 or any substituting or amending legislation.

2.1 Maternity leave

2.1.1 Applies to all pregnant employees of Shropshire Council whose employment falls within the scope of the NJC for the Local Government Service.

2.2 Adoption and Surrogacy Adoption leave

- 2.2.1 Applies to the Adoptive or surrogate parent (male or female) when a child is expected to be placed, through an approved adoption agency and have notified the adoption agency that they agree that the child should be placed with them and on the date of placement.
- 2.2.2 In the case of adoption or surrogacy adoption from overseas the policy will apply when an adopter's child enters Great Britain.
- 2.2.3 The policy applies to individuals who adopt or to one member of a couple where a couple jointly adopt. Where a couple jointly adopt they must choose which partner takes Adoption or Surrogacy Adoption leave.
- 2.2.4 The partner who elects not to take adoption leave jointly may be entitled to paternity leave and pay.

3.0 NOTIFICATION REQUIREMENTS

3.1 Employee - Maternity Leave

- 3.1.1 An employee must provide formal written notification of her pregnancy including the date on which her baby is due and the date on which she would like her maternity leave to start, by the end of the 15th week (the qualifying week) before the expected date of child birth (or as soon as is reasonably practicable).

Appendix 1

3.1.2 Formal notification should be provided through the completion of the 'maternity leave intention form – appendix 1, and returning it to the Employment Services team along with the MATB1 form.

3.2 Employee - Adoption & Surrogacy Adoption Leave

3.2.1 An employee must provide formal written notification of their intention to take Adoption or Surrogacy Adoption Leave at least 7 days before the date they wish to commence this leave (or provide as much notice as is reasonably practicable). This formal notification should be provided through the completion of the 'adoption and surrogacy adoption leave & pay options form – appendix 2, returning it to the Employment Services team along with a matching certificate from their adoption agency confirming that the employee has been matched with a child for adoption and must be completed by the adoption agency containing:

- * the name and address of the agency;

- * the date on which the employee was notified that he or she had been matched with the child; and

- * the date on which the agency expects to place the child with the employee

As documentary evidence of their entitlement to take adoption leave.

3.3 Employer – Acknowledgment of Notification of Intention to take Maternity, Adoption & Surrogacy Adoption pay & leave options form.

3.3.1 Within 28 calendar days of receipt of notification the Employment Services team will write to the employee confirming their pay and leave entitlement and informing them of the date on which they are expected to return to work. This will vary depending on the employee's entitlement to pay, leave and their individual circumstances.

3.4 Employee – Changing the Date of Leave

3.4.1 Should an employee wish to bring forward or postpone their leave they must inform their Line Manager and the Employment Services Team in writing at least 28 calendar days before the new start date or as soon as is reasonably practicable.

3.4.2 Where a baby is born early, the employee must inform their Line Manager and the Employment Services team as soon as is reasonably practicable.

Appendix 1

4.0 TIME OFF WORK

4.1 Provision for Ante-natal care - Pregnant employees

4.1.1 All pregnant employees are entitled to take paid time off work for antenatal care. Apart from the first appointment pregnant employees' must produce evidence of appointments if requested to do so by their line manager.

4.2 Provision for Ante-natal care - Adopting or Surrogate Adopting employee

4.2.1 All adopting or Surrogate Adopting employees are entitled to take paid time off to attend up to five antenatal care appointments. Apart from the first appointment employee's must produce evidence of appointments if requested to so by their line manager.

4.2.2 Employees who adopt with another (joint adopters) may elect for one of them to take paid time off to attend up to 5 appointments, while the other may take unpaid time off to attend up to 2 appointments.

4.2.3 Antenatal care may include a reasonable amount of parent craft and relaxation classes that the employee's doctor or midwife has advised her to attend, in addition to medical examinations.

4.2.4 Employee's should also endeavour to give their line manager as much notice as possible of antenatal appointments and, wherever possible, try to arrange them as near to the start or end of the working day as possible.

4.2.5 The time off which can be taken for each appointment (whether paid or unpaid) is a maximum of 6 1/2 hours)

5.0 LEAVE

A maximum of 52 weeks' maternity, adoption or surrogacy adoption leave can be taken. There is no qualifying service requirement to take maternity, adoption or surrogacy adoption leave.

Maternity, Adoption and Surrogacy Adoption leave is made up of 26 weeks Ordinary Leave followed immediately by 26 weeks Additional Leave.

5.1 Maternity leave

5.1.1 The minimum compulsory maternity leave is 2 weeks (this period is set for health and safety reasons).

5.1.2 If an employee's maternity leave has not already started it will be triggered by the birth of the child, or pregnancy-related absence from the beginning of the 4th week before the EWC. The earliest date that Maternity leave can start is the beginning of the 11th week prior to EWC.

Appendix 1

- 5.1.3 In both these situations the employee must notify her employer (in writing) as soon as is reasonably practicable, that she has given birth or that she is absent wholly or partly because of pregnancy.
- 5.1.4 In the case of a stillbirth or miscarriage, an employee retains her entitlement to leave and pay if this occurs 24 weeks or more into the pregnancy. A stillbirth or miscarriage prior to this date means that the employee will not have the right to maternity leave or pay. She will however, be entitled to sick pay.

5.2 Adoption or Surrogacy Adoption leave

- 5.2.1 An employee's adoption or surrogacy leave can start from the date on which the child is expected to be placed with them, or from a specific date up to 14 days before this date.
- 5.2.2 If the child's placement is terminated during the employee's adoption leave, an employee will continue to be entitled to adoption leave and pay (if applicable) for up to eight weeks after the placement ends. As the employee will be returning to work earlier than intended, he or she should give eight weeks' notice of the early return. In many cases where no notice of the termination of the placement is given this will effectively mean the employee should notify the employer of his or her early return on the day the placement ends.
- 5.2.3 An employee is entitled to only one period of maternity, adoption or surrogacy adoption leave at a time, irrespective of how many children are born to them or placed with them.

5.3 Transfer of leave

- 5.3.1 If an employee proposes to return to work earlier than the maximum 52 weeks, giving proper notification, his/her spouse, civil partner or partner may be eligible to take additional paternity leave (and additional statutory paternity pay) once he/she has returned to work.
- 5.3.2 The earliest that additional paternity leave may commence is 20 weeks after the adopted child's placement and it must end no later than 12 months after the date of placement. The minimum period of additional paternity leave is two consecutive weeks and the maximum period is 26 weeks.

5.4 Parental leave

- 5.4.1 The Council operates a parental leave scheme. This leave is unpaid apart from the first 5 days which is full pay. Further guidance is available in "Parental Leave & Pay" policy.

5.5 Support Leave

- 5.5.1 Support leave, provided by part 2, paragraph 7.6 of the Green Book is a right to one weeks leave paid at normal contractual pay to the nominated carer of an expectant mother at or around the time of birth.

Appendix 1

- 5.5.2 Employees who qualify for statutory paternity leave will be paid under the paternity leave scheme. Employees who do not qualify for statutory paternity leave, i.e. a nominated carer, will not be entitled to statutory paternity leave but should apply for support leave.

6.0 RELATIONSHIP WITH SICKNESS AND ANNUAL LEAVE

Maternity, adoption and surrogacy adoption leave shall be regarded as continuous service for the purposes of the NJC scheme and annual leave.

6.1 Sick leave

- 6.1.1 Maternity 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 sickness leave.
- 6.1.2 If a pregnant employee is sick before the beginning of the 4th week before the EWC the absence will be treated as sickness provided it is covered by self-certification or where appropriate a FIT note. If an employee is sick after the 4th week before the EWC and the sickness is wholly or partly due to the pregnancy they will automatically be required to commence maternity leave. If the sickness is not attributable to the pregnancy they can continue to receive sickness pay until the notified date for commencement of maternity leave.
- 6.1.3 If an employee is sick at any time during their adoption leave, their absence shall be treated as adoption leave and not sick leave.
- 6.1.4 Where due to sickness the employee is unable to return from maternity, adoption or surrogacy adoption leave on the expected date this will still be classed as a return to work and not a postponement of return. The period of sickness must be notified and certified in the same way as for any other period of sickness. Sickness will be recorded and monitored in the usual way.
- 6.1.4 Where an employee is certified as sick during maternity, adoption, or surrogacy adoption leave there is no right to payment of contractual sick pay as this is deemed to be "salary", and maternity, adoption or surrogacy adoption pay will continue to be paid

6.2 Annual leave

- 6.2.1 Annual leave and bank holidays will continue to be accrued throughout the ordinary and additional leave periods. Concessionary days are discretionary to the authority and may not form part of the accrued leave entitlement. Leave should normally be taken within an employee's personal leave year and in accordance with the Council's annual leave guidance. An employee should discuss when their leave can be taken, with their line manager before

Appendix 1

they go on maternity, adoption or surrogacy adoption leave. In all circumstances, the employee should take all pro rata leave entitlement up to the time their leave starts and any form of leave accrued during maternity leave to be taken before returning to work i.e. maternity, adoption or surrogacy adoption leave ends and accrued annual leave begins.

- 6.2.2 Where an employee is intending to return to work on reduced hours any outstanding leave based on their full time contract should be taken before they commence their part-time role.
- 6.2.3 In the event that there may be insufficient time available to take all the annual leave entitlement with the same leave year, in exceptional circumstances accrued leave may be allowed to be carried forward into the next leave year in accordance with the annual leave policy, up to a maximum of 5 days.

7.0 PENSION

- 7.1 Where an employee is a member of the Local Government Pension Scheme, employee pensions contributions will continue to be deducted from any employee's maternity pay, adoption pay or surrogacy adoption pay.
- 7.2 An employee who is intending to take a period of unpaid additional leave should consult the pension's team for advice about the possible effects on their pension.

8.0 TERMS AND CONDITIONS OF EMPLOYMENT

- 8.1 The employee's contract of employment remains in force throughout their maternity, adoption and surrogacy adoption leave, continuing to receive all contractual benefits except salary.

8.2 Continuous Service

- 8.2.1 The taking of maternity, adoption or surrogacy adoption leave does not constitute a break in service. An employee's service is regarded as continuous for the calculation of annual leave, sickness payment and redundancy compensation.

9.0 CONTACT

9.1 Keeping in Touch (KIT) Days

- 9.1.1 An employee on maternity, adoption or surrogacy adoption leave is able to work for up to 10 days during their leave without losing any maternity or adoption pay and without bringing their leave to an end. For record keeping purposes working for part of a day will count as one day. Work may include training or any activity undertaken for the purposes of keeping in touch with the Council.

Appendix 1

- 9.1.2 Such days could include staff or team meetings, occasional days of work etc. and should where possible, be agreed in advance by the line manager and employee before the employee goes on leave.
- 9.1.3 Any such work is by arrangement with the manager who will keep a record of the number of days work undertaken during the maternity leave. KIT days are not compulsory and neither party can insist on work been undertaken or being given any work to do.
- 9.1.4 An employee will normally be reimbursed for KIT days in the form of Time off in Lieu (TOIL). However, in certain circumstances, payment for such work can be made and will be paid at the contracted hourly rate of pay for the hours worked which will be offset against the SMP entitlement for that day
- 9.1.5 An employee is prevented by legislation from carrying out any work (including KIT days) in the first two weeks after the birth of her baby (compulsory maternity leave).

9.2 Reasonable Contact

- 9.2.1 In addition to the provision for "Keeping in Touch" (KIT) days there may be "reasonable contact" between the line manager and employee during the employee's leave. This contact does not count as work and does not bring the maternity leave period to an end.
- 9.2.2 Such contact could include issues such as the return to work, significant workplace developments and training opportunities.
- 9.2.3 In some instances, changing circumstances in the Council could mean additional contact may be necessary to ensure that adequate involvement and consultation on key issues is assured.

10.0 PAY

- 10.0.1 Statutory maternity and adoption pay is paid for 39 week. There is no statutory entitlement to surrogacy adoption pay.
- 10.0.2 Any salary increments which occur while an employee is on maternity leave, adoption leave surrogacy adoption leave will affect the amount of statutory or occupational pay received.
- 10.0.3 Maternity pay and adoption pay will commence on the day the maternity or adoption leave commences.
- 10.0.4 Average weekly earnings take into account what the employee has earned in the eight week period ending with the Qualifying Week (QW). Therefore bonuses, pay awards and other ad-hoc payments which fall in that period count in the calculation of SMP.

Appendix 1

10.0.5 Tax, national insurance and employee pension contributions are deducted from maternity and adoption pay.

10.0.6 An employee does not have to repay statutory maternity or adoption pay if they do not return to work

10.1 Statutory Maternity Pay

10.1.1 To be eligible for statutory maternity pay an employee must have 26 week's continuous service at the end of the 15th week before the expected date of childbirth and have average weekly earnings, for the 8 week period ending in the 15th week before the EWC, of not less than the Lower Earnings Limit.

10.1.2 Statutory Maternity Pay is paid as follows:

- First 6 weeks at 90% of average weekly earnings with no upper limit.
- Remaining 33 weeks at the standard rate or a rate equal to 90% of average weekly earnings, whichever is lower. Details which can be found at appendix 3.

10.1.3 If an employee is not entitled to SMP the Employment Services team will provide the employee with a SMP1 form so that the employee can claim Maternity allowance.

10.2 Statutory Adoption Pay

10.2.1 To be eligible for statutory adoption pay an employee must have 26 weeks continuous service by the end of the week the adopter was notified as being matched with a child and have average weekly earnings, for the 8 week period ending in the 15 week before the EWC, of not less than the Lower Earnings Limit (£111 they are notified that they have been matched with a child or received official notification that they are eligible to adopt a child from abroad on or after 7 April 2013).

10.2.2 Statutory Adoption Pay is paid as follows:

- First 6 weeks at 90% of average weekly earnings with no upper limit.

Remaining 33 weeks at the standard rate or a rate equal to 90% of average weekly earnings, whichever is lower.

10.2.3 If an employee is not entitled to SAP or who are normally low paid, an employee may be able to get income support while on adoption leave.

10.3 Occupational Maternity and Adoption Pay

10.3.1 An employee with over one year's continuous local government service, at the end of the 11th week before the expected week of childbirth or placement, is entitled to receive occupational maternity and adoption pay if they declare an intention to return to work

Appendix 1

following their leave and subsequently return to work following their leave for a minimum period of 13 weeks to their original contracted hours.

10.3.2 For employees not intending to return to local authority employment employee's entitlement will be to statutory pay only.

10.3.3 Occupational maternity and adoption pay is paid as follows:-

- For the first six weeks of leave an employee is entitled to 90% of their average weekly salary offset against their statutory payments.
- Where an employee declares an intention to return to work following their leave and subsequently returns to local authority employment for a minimum period of 13 weeks and to their original contracted hours they will receive 12 weeks half pay plus any statutory pay due (total payments cannot exceed full pay).
- In respect of maternity and adoption leave the remaining 21 weeks' will be paid at the lower and appropriate statutory maternity or adoption pay rate.

10.3.4 If an employee does not subsequently return to local authority employment for a minimum period of 13 weeks they will be required to repay the 12 weeks' half pay.

11.0 RETURNING TO WORK

It will be assumed, unless previously notified otherwise, that an employee will be returning at the end of Additional Leave (taking the full 52 weeks' entitlement).

Where an employee is unable to return because of sickness or injury the Council's Management of Absence policy will apply. (Refer to caring about sickness policy) [LINK](#)

If an employee wishes to return to work earlier than the expected return date they must provide at least 21 days' written notice of the date of early return. If they do not do this the Council may postpone their return for up to 21 days provided this does not extend the leave beyond the original return date.

11.1 Right to return to work

11.1.2 Subject to paragraph 11.2.3 (below), an employee has the opportunity to return to the job in which she was employed under her original contract of employment and on terms and conditions not less favourable than those which would have been applicable to them if they had not been absent. A "job", for this purpose, means the nature of the work which they were employed to do and the capacity and place in which they were so employed.

Appendix 1

- 11.2.3 Where it is not practicable by reason of redundancy for the authority to permit the employee to return to work in their job as defined above, the employee shall be entitled to be offered a suitable alternative vacancy where one exists, provided that the work done in that post is suitable to them and appropriate to the circumstances, and that the capacity and place in which they are to be employed and their terms and conditions of employment are not substantially less favourable to them than if they had been able to return in the job in which they were originally employed.
- 11.2.4 Suitable alternative employment may also be offered in exceptional circumstances (other than redundancy) e.g. a general reorganisation, which would have occurred if the employee had not been absent, necessitate a change in the job in which they were employed prior to their absence. The work to be done should be suitable to them and appropriate to the circumstances and the capacity and place in which they are to be employed and their terms and conditions of employments should not be less favourable to them than if they had been able to return to job in which they were originally employed. The employee must return with their seniority, pensions rights and similar rights as they would have been if they had not been absent, regardless of whether Additional leave has been taken.
- 11.2.5 For an employee where, because of an interruption of work (whether due to industrial action or some other reason) it is unreasonable to expect them to return on the notified day, the employee may instead return when work resumes, or as soon as reasonably practicable thereafter.
- 11.2.6 For an employee where no date of return has been notified and there is an interruption of work (whether due to industrial action or some other reason) which makes it unreasonable to expect the employee to return to work before the end of the maternity leave period and in consequence they do not notify a date of return, they may exercise their right to return by giving at least 7 days written notice to the authority that they intend to return at any time before the end of 14 days from the end of the interruption.

11.3 Right to request flexible working

- 11.3.1 The Council operates a scheme which allows eligible employees to request to reduce their hours, or change their working pattern. Salary and annual leave entitlements are adjusted accordingly. Further guidance is available in the Flexible Working Policy”.

12.0 NON RETURNERS

In the event an employee does not return to work, the employee will refund the monies paid, or a proportion, as the authority may decide, excluding any statutory payments.

12.1 Resignation

Appendix 1

12.1.1 If an employee decides not to exercise their right to return to work, following their leave, they are effectively resigning and must give the required contractual notice. Further guidance is available in the notice period policy.

12.2 Redundancy

12.2.1 Employees away from work will be included in any redundancy consultation process. Further guidance is available in the Redundancy" and" Redeployment" policies.

12.2.2 Employee's dismissed whilst on maternity, adoption or surrogacy adoption leave are entitled to:

- Written reasons for the dismissal and to be paid for any outstanding holiday pay that has accrued during their maternity, adoption or surrogacy adoption leave up to the end of their notice period.
- Employees subject to notice of dismissal due to reason of redundancy (**voluntary or compulsory**) are entitled to receive full pay during their notice period
- Where an employee is in receipt of statutory maternity pay (SMP) or Statutory Adoption Pay (SAP) this will be offset against the notice pay for any week in the notice period which the employee would be getting SMP or SAP.

13.0 HEALTH & SAFETY

13.1 Maternity Risk Assessment

13.1.1 The Council must ensure that a risk assessment of the working environment is carried out to identify any potential risks to an employee while she is pregnant, taking into account any relevant advice from the GP or midwife. Any potential risks should be removed, or if this is not possible, alternative temporary working arrangements made.

Some of the more common risks might be:

- Moving and handling
- Standing or sitting for long periods of time
- Exposure to infectious diseases
- Threat of violence at work
- Long working hours
- Work related stress

13.1.2 If it is not possible to alter the employee's working conditions to remove risk and there is not suitable alternative work available the employee may be suspended from work on maternity grounds, until such time as there is no longer a risk or she goes on maternity leave.

Appendix 1

13.1.3 This suspension does not affect any employee's statutory or contractual rights. The employee will be entitled to her normal salary and contractual benefits during the suspension unless she has unreasonably refused an offer of suitable alternative employment.

13.2 Nursing mother

13.2.1 The nursing mother will need to inform her manager in writing if she intends to continue to breastfeed after returning to work. The manager will need to conduct a further risk assessment with advice from both a Health and Safety Officer and a HR Officer and in discussion with the employee.

14.0 Protection against detriment and dismissal

14.1 It is not unlawful to dismiss an employee whilst on maternity, adoption or surrogacy adoption leave, however employee's are protected against being subject to detriment and/or dismissal because of pregnancy, pregnancy related sickness, birth or) or from taking or intending to take maternity, adoption or surrogacy adoption leave. Please also refer to 12.2 Dismissal due to redundancy or other reason for further guidance with respect entitlements.

15.0 Undertaking Election duties

15.1 Employees who undertake election duties during maternity or adoption leave are not entitled to receive SMP or SAP for the week in which duties were undertaken. It is recommended that before undertaking election duties during maternity or adoption leave, due to individual circumstances, employees should contact Employment Services to better understand the impact on their pay.

15.0 ABBREVIATIONS, DEFINITIONS AND TERMS

15.1 Abbreviations

The following abbreviations and terms are used in this policy:

SMP Statutory Maternity Pay

EWC Expected Week of Childbirth

QW Qualifying Week – the 15 week before the EWC

15.2 Definitions

15.2.1 Termination

Appendix 1

The word termination in the context of this policy means still birth, miscarriage or abortion after a pregnancy lasting less than 24 weeks.

15.2.2 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 authority to the employee under the current contract of employment for working their normal hours in a week. Where there are no normal working hours, a week's pay is the average remuneration in the period of 12 weeks preceding the date on which the last complete week ended, excluding any week in which no remuneration was earned.

Nothing in the above provisions shall be construed as providing rights less favourable than statutory rights.

Review of Policy

The policy will be reviewed at regular intervals in conjunction with changes to legislation that may impact upon it. The policy will be reviewed no later than 2 years after its implementation by the Head of Human Resources & Development in consultation with the trade unions.

EINA conducted January 2013

Policy implemented: April 2014

Text to insert into Shropshire Council Maternity, Adoption and Surrogacy Adoption policy

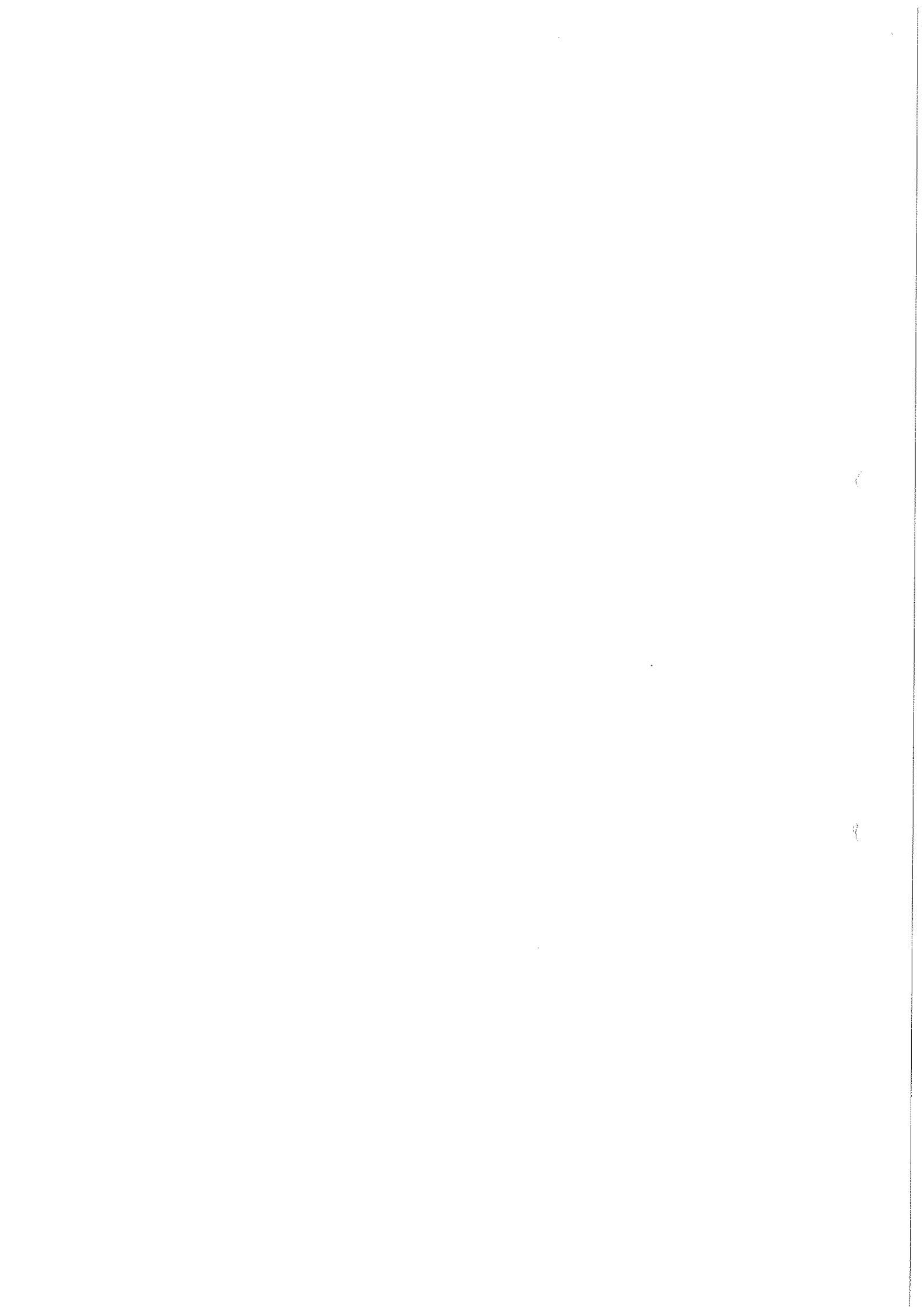
13.2.2 If a breastfeeding mother returns to work whilst still breastfeeding, she may be subject to a change to working arrangements to ensure that suitable rest periods and duties may safeguard her ability and right to continue breastfeeding. To enable any changes to be put in place, the conversation about breastfeeding on return to work should begin early.

This may include making a request for flexible working, which may involve changes to an employee's days, hours or place of work. Managers must give the request serious consideration and should refer to the 'Flexible Working Framework'.

13.2.3 A breastfeeding mother must be provided with the following:

- A suitable space in which to breastfeed: a private or screened area away from view (ideally a room or empty office with a lockable door) with access to an electrical outlet. Toilet facilities should not be suggested as a suitable facility.
- Milk storage facilities such as a fridge or cool box.
- Facilities for washing, sterilising and storing receptacles.
- Breaks to breastfeed (the length and frequency of these breaks will depend upon the mother's individual circumstances)
- Lead times to change a breastfeeding routine (to avoid any pain or discomfort)

13.2.4 It is sex discrimination to harass a breastfeeding employee or to fail to take action to stop other staff members from harassing a breastfeeding employee. Managers should refer to the 'Harassment and bullying policy procedure'.





Employee Handbook Special Leave

Contents

- 1.0 Guidance
- 2.0 Election duties
- 3.0 Time off for Interviews
- 4.0 Time off for Jury Service
- 5.0 Public Duties

1.0 Guidance

Special leave with or without pay may be approved at the discretion of your Manager.

The table below outlines the allowances for Special Leave:

Circumstance	Leave Allowance
Death of close relative <i>(mother, father, sister, brother, spouse or partner, son or daughter, mother-in-law, father-in-law, grandparent or grandchild).#</i>	Up to 5 working days with pay* (including day of funeral) per relative.
Serious illness of close relative <i>(see definition of close relative above) #.</i>	Up to 5 working days with pay* annually. Any time over the 5 working days should be covered by annual leave or annualised hours. In the event that leave has been exhausted the appropriate Manager may grant a period of one month's unpaid leave. Requests for unpaid leave beyond a month should be referred to the Head of HR
Funeral of friend or colleague.	Up to half a day with pay or one day if significant travelling involved.
Attendance at hospital, doctor, dentist, or supporting the visit of a Health Care Visitor with <u>dependent</u> relative. <i>Employees should refer to the Guidance on Hours of work for appointments that relate specifically to themselves.</i>	Time off with pay to attend the appointment, provided that attendance is not possible outside normal working hours (appointment card should be requested).
When a close relative is involved in an accident or is assaulted, and in the case of a child when an incident affecting the child	Up to 3 working days with pay*, when the employee needs to respond to the incident immediately.

Appendix 3

arises at school.	
When unexpectedly, arrangements for the care of a dependent are disrupted or come to an end.	Up to 1.5 days* with pay, per occasion and on no more than two occasions per year.
To attend appointments with support agencies or solicitors, to arrange re-housing, to change child care and court appearances when an employee is experiencing domestic abuse.	Up to 5 working days with pay*
Attendance at Court in order to conclude divorce proceedings	Up to 1 day with pay.
To attend appointments, checks and treatment in relation to Fertility Treatment.	Time off with pay (appointment card should be requested) for appointments, checks and treatment. Any period of rest required after treatment should either be covered by annual leave, credit hours or sick leave if medical certification is provided
To attend a graduation ceremonies in which the training / education has been funded by the Authority.	1 day with pay

* This will be pro-rated for part time workers to their equivalent working week

The list of close relatives detailed within this policy is not exhaustive and managers need to take account of other family members who have had a significant impact in the employee's life, for example an uncle / aunt who acted in the absence of a father / mother. The list of relatives detailed also applies to step or half relatives.

It is likely that some requests for Special leave may be submitted after the time has been taken, for example, emergencies or unplanned disruption to childcare arrangements. Such requests should be approved where possible, giving consideration of the circumstances of the absence and providing that the employee has contacted their manager as soon as is reasonably possible, notifying them of the reason that they are absent from work.

Where a request for Special leave has not been submitted prior to a planned appointment, for example, attendance at court, hospital with a dependant etc... your line manager has the discretion not to approve such requests.

This will apply to all Council employees other than those who are directly employed by a School , on a consistent basis irrespective of length of service.

All requests for Special Leave should be submitted to your line manager on the Special Leave Request Form. All allowances are based on a rolling 12 months period.

Appendix 3

2.0 Election Duties

2.1 Anyone undertaking election duties as presiding officers, poll clerks or counting assistants in Police Commissioner, European, Parliamentary or Council elections, which take part during their normal working day, will be granted paid time off, up to a maximum of 7.4 hours. In the event that you have been employed to a role for the election, special leave would not be applicable.

Ultimately, the needs of the service take priority and requests to undertake election duties need to be approved by your line manager.

2.2 Employees who undertake election duties during maternity or adoption leave are not entitled to receive SMP or SAP for the week in which duties were undertaken. It is recommended that before undertaking election duties during maternity or adoption leave, due to individual circumstances, employees should contact Employment Services to better understand the impact on their pay.

3.0 Time off for Local Government or Public Sector Interviews

If you have less than one year's service since taking up your present appointment with the Council, you are required to take annual leave (or where appropriate use credit hours) when attending job interviews.

After one year's service, time off with pay should be granted for any interviews within the local government service or in other public sector areas. For interviews for other posts annual leave should be taken.

4.0 Time off for Jury Service

If you receive a summons to serve on a Jury, you should inform your Line Manager who is required to grant leave of absence, unless exemption is secured.

If you are serving as a Juror, you should claim the allowance for loss of earnings to which you are entitled under the Juror's Allowance Regulations currently in force. An amount equal to the allowance received will be deducted from your pay.

5.0 Public Duties

Approved paid Special leave of up to 18 days in any leave year may be granted (including school based staff) to you in order to undertake public duties and any necessary training. These can be expressed in terms of hours (pro rata) where duties are likely to be over shorter periods than a full day. Duties include:

- As a JP, School or College governor
- As a member of a local authority, statutory tribunal, health authority or trust
- Appointment as a retained fire fighter or special constable.

Appendix 3

- As a volunteer to support the Council in dealing with major events or emergencies

Duties over the 18 days may be allowed at the discretion of your Director and will be on an unpaid basis.

Review of Policy

The policy will be reviewed at regular intervals in conjunction with changes to legislation that may impact upon it.

Policy Agreed:

Policy Forum – 30th April 2013

EJCC – 11th October 2013



Employee Handbook

Periods of Notice

- 1.0 The contractual period of notice required to be given to an employee to terminate their employment, and that required of them on resignation will be clearly stated in the terms of appointment. The following local scheme on contractual notice periods has been adopted for NJC employees:-

Those graded up to and including Grade 8	1 month
Those graded Grade 9 and 10 (scp 29-34) inclusive	2 months'
Band 11 (scp 35 – 39)	2 months'
Band 12 (scp 40 – 44)	3 months'
Band 13 (scp 45 – 49)	3 months'
Band 14 (scp 50 – 54)	3 months'

Where appointments are made to linked grades the contractual notice period will be as at the maximum of the grade advertised.

These periods of notice may be varied in relation to particular posts, when an appointment is being made, at the discretion of the Director, after consultation with the Head of Human Resources & Development.

- 2.0 The statutory provisions relating to minimum periods of notice to be given by the employer to any employee are as contained in the Employment Rights Act 1996-

Period of continuous employment - Minimum notice

One month or more but less than 2 years	Not less than 1 week
Two years or more but less than 12 years	1 week for each year of continuous service
12 years or more	Not less than 12 weeks

Where notice is given by the employer to an employee, the employee is entitled to receive full contractual pay during the period of notice.

- 3.0 The employer's obligation to the employee under the contractual notice agreed must always be read against any additional notice required to be given to the employee under the statutory grade. Therefore an employee with one month's contractual notice entitlement with 5 years service will be entitled to five weeks statutory notice on the termination of their employment by the Council and an additional week's notice for each additional year's service up to a maximum of 12 weeks notice.
- 4.0 The statutory minimum period of notice to be given by an employee who has been employed for one month or more is one week. In instances where a longer period of notice is required from an employee under their contract of employment the contractual requirement prevails, although of course it is always open to the employer to agree to a shorter period of notice being worked by the employee if this is mutually acceptable.
- 5.0 Pay in lieu of notice (which is normally a tax free payment) should only be used where it is unavoidable or reasonable. In cases of redundancy or ill-health retirement, for example, where the timing of the decision makes it impossible for the employee to work their full notice then payment in lieu (for the whole or part of the notice period) will be unavoidable. Where on the other hand it is possible for the employee to work during the normal notice period, there may sometimes be good reasons for waiving the requirement to do so. For payment in lieu to be made in these circumstances, the "good reasons" would have to be clearly demonstrated if the payment was challenged by, for example, the District Auditor.

Payment in lieu of notice is not justifiable in cases where the timetable for retirement or redundancy is known sufficiently well in advance to give normal notice, and there is nothing else preventing this.

Review of Policy

The policy will be reviewed at regular intervals in conjunction with changes to legislation that may impact upon it.

Equality Act 2010 Section 18

(1) This section has effect for the purposes of the application of Part 5 (work) to the protected characteristic of pregnancy and maternity.

(2) A person (A) discriminates against a woman if, in the protected period in relation to a pregnancy of hers, A treats her unfavourably —

(a) because of the pregnancy, or

(b) because of illness suffered by her as a result of it.

(3) A person (A) discriminates against a woman if A treats her unfavourably because she is on compulsory maternity leave.

(4) A person (A) discriminates against a woman if A treats her unfavourably because she is exercising or seeking to exercise, or has exercised or sought to exercise, the right to ordinary or additional maternity leave.

(5) For the purposes of subsection (2), if the treatment of a woman is in implementation of a decision taken in the protected period, the treatment is to be regarded as occurring in that period (even if the implementation is not until after the end of that period).

(6) The protected period, in relation to a woman's pregnancy, begins when the pregnancy begins, and ends—

(a) if she has the right to ordinary and additional maternity leave, at the end of the additional maternity leave period or (if earlier) when she returns to work after the pregnancy;

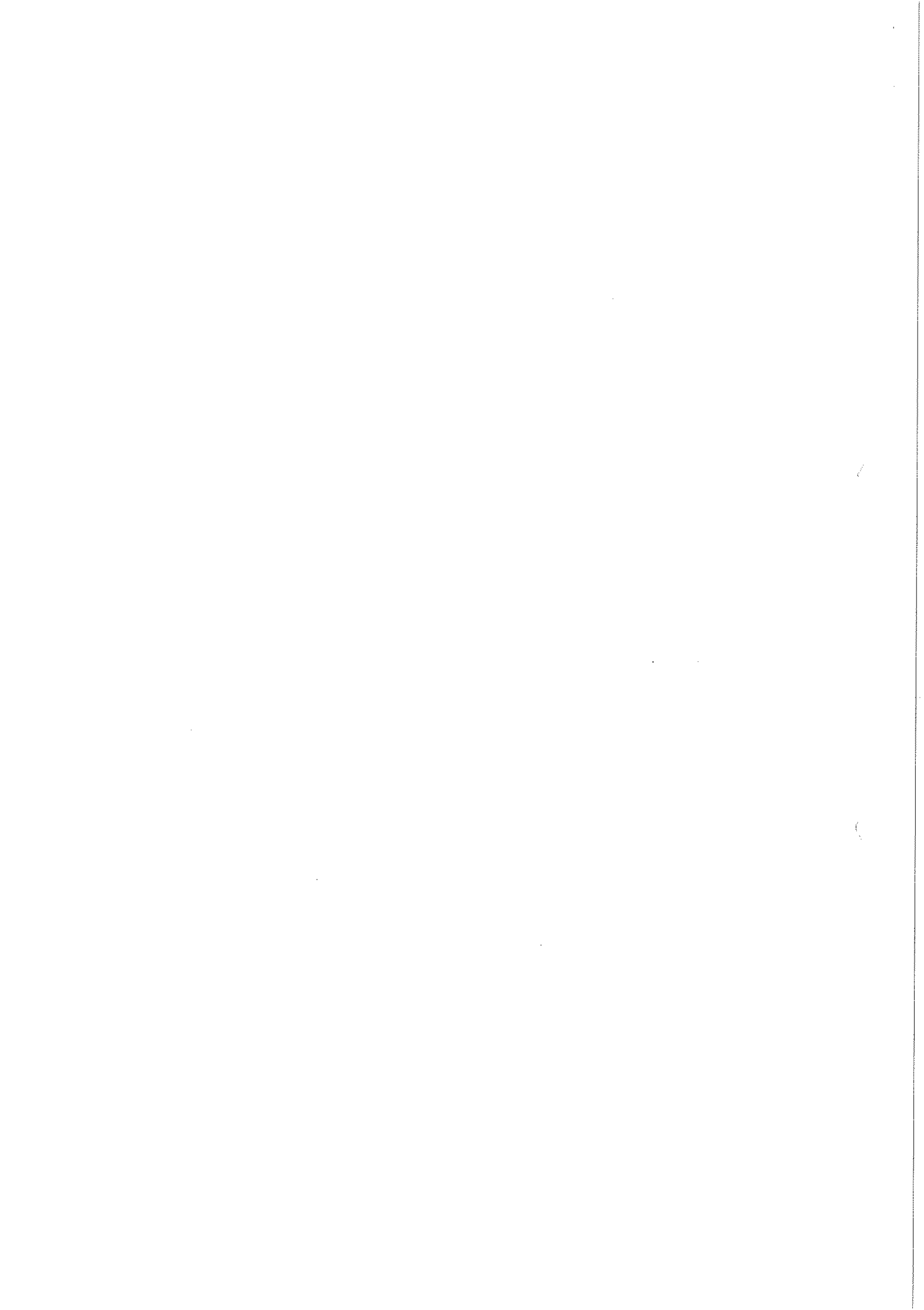
(b) if she does not have that right, at the end of the period of 2 weeks beginning with the end of the pregnancy.

(7) Section 13, so far as relating to sex discrimination, does not apply to treatment of a woman in so far as—

(a) it is in the protected period in relation to her and is for a reason mentioned in paragraph

(a) or (b) of subsection (2), or

(b) it is for a reason mentioned in subsection (3) or (4).



Equality Act 2010 Section 19

(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.

(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—

(a) A applies, or would apply, it to persons with whom B does not share the characteristic,

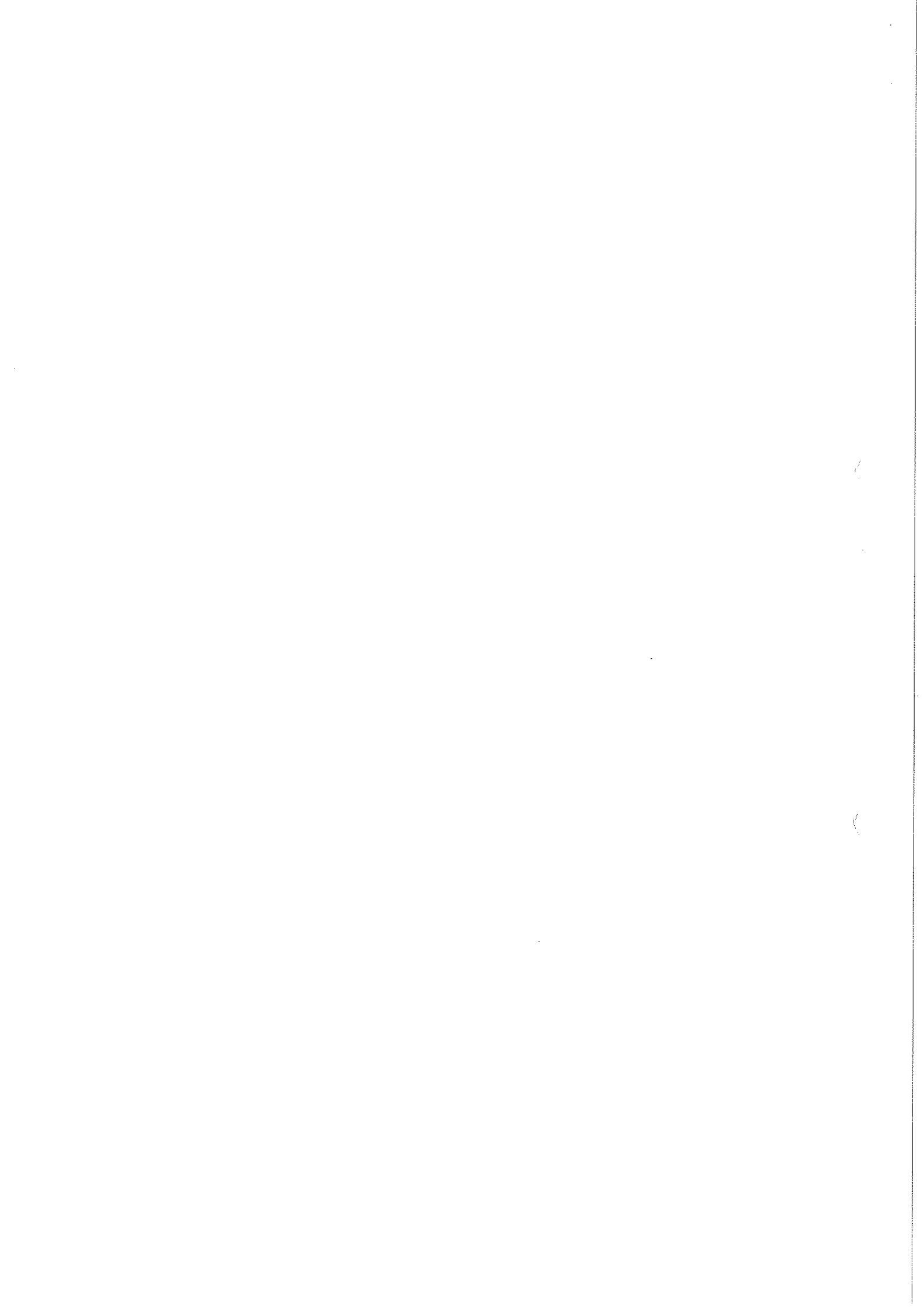
(b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,

(c) it puts, or would put, B at that disadvantage, and

(d) A cannot show it to be a proportionate means of achieving a legitimate aim.

(3) The relevant protected characteristics are—

- age;
- disability;
- gender reassignment;
- marriage and civil partnership;
- race;
- religion or belief;
- sex;
- sexual orientation.





Employee Handbook

Diversity in Employment Policy

Shropshire Council is committed to one simple, yet important vision:

To improve significantly the quality of life for Shropshire people.

Shropshire Council believes and recognises that the diversity of our population is one of the County's greatest strengths and assets. Our core values commit us to 'Promote Diversity'.

Shropshire Council is committed to the promotion of Equal Opportunities and freedom from discrimination in all aspects of its services. We believe that we should take positive steps to promote equality of opportunity in the delivery of our services and the employment of people.

Shropshire Council values the diversity of its workforce. It will not tolerate less favourable treatment on grounds of: gender, race, colour, ethnic or national origin, disability, marital status, sexual orientation, responsibility for dependents, age, trade union or political activities, religion/beliefs, or any other reason which cannot be shown to be justified.

What you can expect as an employee

Being an equal opportunities employer we are aiming to ensure you:

- Are recruited on merit
- Are not harassed or bullied at work
- Are paid fairly and equitably
- Are not unfairly discriminated against
- Have an annual appraisal and access to appropriate training and development required to do your job
- Are supported by fair and clear employment policies and procedures which reflect this policy

Your responsibilities as an Employee

- To provide a high standard of service to local people, and to those you come into contact with
- To respect others regardless of who they are

- To undertake training and self-development as identified to help improve our service to users, including equality and diversity training
- To promote equality of opportunity and help to build cohesive community relations
- To adhere to all appropriate Council policies, procedures and codes of practice
- To demonstrate these values in the way you work
- To challenge behaviour or attitudes which are contrary to this policy

Legislation underpinning Diversity in Employment Policy includes:

- Race Relations Act 1976
- Race Relations (Amendment) Act 2000
- Sex discrimination Act 1975
- Disability Discrimination Act 1995
- Human Rights Act 1998
- The Employment Equality (Religion or Belief and Sexual Orientation) Regulations 2003
- Rehabilitation of Offenders Act 1974
- Equal Pay Act and other appropriate legislation and the European Directive 2000

Review of Policy

The policy will be reviewed at regular intervals in conjunction with changes to legislation that may impact upon it. The policy will be reviewed no later than 2 years after its implementation by the Head of HR & Development in consultation with the trade unions.

EINA conducted:

For further information, visit our Equalities and Diversity web pages