

9 March 2015		ITEM: 6
General Services Committee		
Shared Parental Leave and Pay		
Wards and communities affected: None	Key Decision: None	
Report of: Neil Mercer, Interim HR Policy & Strategy Manager		
Accountable Head of Service: Jackie Hinchliffe, Head of HR, OD and Transformation		
Accountable Director: Graham Farrant, Chief Executive		
This report is Public		

Executive Summary

New legislation to assist working parents comes into effect in April. It applies where both parents are working, and may apply at Thurrock if at least one parent works for the Council. One aspect of the new arrangements is left to individual employers to decide, namely whether or not to provide an enhanced rate of shared parental pay.

1. Recommendation

- 1.1 That General Services Committee should authorise the payment of an enhanced rate of shared parental pay to employees, rather than the statutory rate of £138.18 per week.**

2. Introduction and Background

- 2.1 New legislation means that, from 5th April 2015, both parents of a new born baby will have greater flexibility in determining which of them can take leave from work to care for their child in its first year.
- 2.2 In the vast majority of cases, this scenario will apply to a woman taking maternity leave and the father of her child. Similar provisions, however, apply to adoptions, surrogacy arrangements and same sex partnerships.
- 2.3 For ease of understanding, and because this matter concerns an issue of potential sex discrimination, this document focuses on a scenario where a mother takes maternity leave and the other parent is male.

- 2.4 A mother can choose to end her maternity leave early in favour of a shared parental leave (SPL) arrangement, in which either parent can take time off work to be the primary carer (although the mother must take a minimum of two weeks' maternity leave immediately after giving birth).
- 2.5 This may happen at a time when the mother would have received an enhanced, occupational rate of maternity pay, had she remained on maternity leave¹. The new regulations do not require employers to enhance pay for employees taking SPL: they are only entitled to the lower, statutory rate of £138.18 per week.
- 2.6 The vast majority of employees who could benefit from SPL are fathers of new born babies, therefore the new regulations could constitute sex discrimination against men if they were not paid the same as a woman on maternity leave.
- 2.7 Employment law commentators believe this matter will only be resolved if and when it is challenged in the courts.
- 2.8 Employers can, in the meantime, choose whether or not to voluntarily enhance payments: this is what GSC is being asked to decide.

3. Issues, Options and Analysis of Options

- 3.1 Shared parental pay (ShPP) is paid to employees by the Government, at the statutory rate, regardless of whether the employer pays an additional, enhanced rate.
- 3.2 The cost to the Council of enhancing ShPP is difficult to estimate, as it involves forecasting the numbers of employees who will become parents in the future, and how many of them will opt to take SPL.
- 3.3 A crude estimate, based on 2014 figures, indicates that the maximum cost to the council would be £54,000 per annum. This would only apply if every parent who was eligible for SPL took it at the earliest opportunity (ie two weeks after the mother had given birth). The actual figure would almost certainly be a fraction of this.
- 3.4 Other employers are divided as to whether or not they should pay enhanced ShPP. For example, in a December 2014 survey, the East of England Local Government Association found that four local authorities in the region intended to enhance pay, five did not and four were undecided.
- 3.5 Options available to GSC are:

¹ At Thurrock, a woman with at least one year's service is entitled to occupational maternity pay of 12 weeks at half pay, in addition to statutory maternity pay entitlements (which are paid for by the Government).

- (i) To authorise the payment of enhanced ShPP
- (ii) Not to authorise enhanced ShPP
- (iii) Not to authorise, but to review the situation at a future date, for example, after a binding, legal precedent had been set and/or the demand for, and cost of, ShPP could be better assessed.

4. Reasons for Recommendation

Option (i) is recommended because:

- Offering enhanced ShPP complements the council's recruitment and retention strategies by promoting Thurrock as a parent-friendly employer.
- It would mean little risk of legal challenge (it should be noted that two male members of staff have already enquired whether enhanced ShPP will be available at Thurrock).
- The cost to the council would be relatively little.

5. Consultation

This report was discussed at Directors' Board on 27th January 2015, where it was agreed to recommend, to GSC, that enhanced ShPP should be authorised.

6. Impact on corporate policies, priorities, performance and community impact

The SPL and ShPP regulations require amendments to the Council's Working Families Policy and Procedures, including the deletion of the Additional Statutory Paternity Leave and Additional Statutory Paternity Pay Schemes, (which the new legislation has replaced with SPL and ShPP), and the creation of a new SPL policy, which is currently being drafted.

7. Implications

Financial

Implications verified by: **Sean Clark**
Head of Corporate Finance

- 7.1 Section 3.3 above shows that the cost of paying enhanced SPL is difficult to quantify and will vary from year to year. Any additional costs will have to be met from the services' employee budgets. Agreeing this should also be seen as an increase to the cost of terms and conditions at a time when the targeted £1m reduction in terms and conditions for the 2015/16 budget has not been achieved.

Legal

Implications verified by: **Chris Pickering**
Principal Solicitor: Employment and Litigation

- 7.2 There is currently no legal requirement to provide enhanced SPL, although this could change if challenged in the courts.
- 7.3 By adopting a policy of paying enhanced SPL, the council should ensure that it will have a strong defence to this type of challenge and the possibility of having to issue back-pay to employees who had been denied the enhanced rate.

Diversity and Equality

Implications verified by: **Teresa Evans**
Equalities and Cohesion Officer

- 7.4 Providing enhanced SPL would help promote Thurrock as a family friendly employer and be within the spirit of equal pay regulations.
- 7.5 It should be noted that any employee taking SPL would stand to benefit, should enhanced pay be provided. This would, in the majority of cases, apply to men, however it would apply equally to women who chose to take SPL.
- 7.6 **Other implications** (where significant) – i.e. Staff, Health, Sustainability, Crime and Disorder)

None.

8. **Background papers used in preparing the report** (including their location on the Council's website or identification whether any are exempt or protected by copyright):

- Shared Parental Leave - Employers' Guide (GOV.UK)
- Shared Parental Leave factsheet (Chartered Institute of Personnel & Development)
- Getting to Grips with Shared Parental Leave (Shoosmiths Solicitors)

- Enhanced Maternity and SPL Pay (survey by East of England Local Government Association)

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