

| <b>COUNCIL</b>      |                                   |                    |
|---------------------|-----------------------------------|--------------------|
| <b>Report Title</b> | Parental leave scheme for Members |                    |
| <b>Key Decision</b> |                                   | Item No.           |
| <b>Ward</b>         | n/a                               |                    |
| <b>Contributors</b> | Head of Law                       |                    |
| <b>Class</b>        | Part 1                            | Date: 24 July 2019 |

## 1 Summary

This report proposes that the members' allowances scheme be amended to provide for members to continue to receive their allowances during any period of parental leave.

## 2 Purpose

To ensure that the Council amends its Constitution to incorporate an amended members' scheme of allowances if the recommendations are approved

## 3 Recommendations

- 3.1 Having considered the recommendations of the London Councils Independent Remuneration Panel, to decide whether to agree to the incorporation of paid parental leave in its Scheme of Allowances and if so to decide on the features of that scheme.
- 3.2 Subject to agreement to the terms of a members parental leave scheme to ask officers to publish notice of change to the Members' Scheme of Allowances in a local newspaper and ensure that copies are available for inspection at all reasonable hours ; and
- 3.3 Subject to agreement of a members' parental leave scheme to agree that the Council's Constitution be amended to incorporate the amended Scheme of Members' Allowances.

## 4 Background

- 4.1 Currently the Council does not have a formal parental leave scheme for Members, though custom and practice has generally been (both in Lewisham and elsewhere) that members continue to receive their allowances until they return to duties. Those payments have been made without any agreed time frame and without note in the members' allowances scheme.
- 4.2 In November 2018, Mayor and Cabinet considered the report of the Barriers to Politics Working Group dated November 2018. The Council is committed,

following that report, so far as possible, to remove barriers which may deter people from standing for local election. One such barrier is the fact that members currently in Lewisham do not have an entitlement to parental leave allowance.

- 4.3 Section 85 Local Government Act 1972 provides that if a member fails to attend a Council meeting (or executive meeting if the member is a member of Mayor and Cabinet) for a period of six consecutive months, then unless before the expiry of that period the Council approves the non-attendance, then by law the member will cease to be a member at the end of that six months.
- 4.4 The Local Authorities (Members' Allowances) (England) Regulations 2003 provide that local authorities must make a scheme which provides for both a basic allowance payable to all councillors and for special responsibility allowances to be paid to members who have special responsibilities within the categories defined in the regulations. Once the Scheme is agreed, they also provide for the payment of dependant carers' allowance and travelling and subsistence allowance. Once agreed, allowances may only be made to members in accordance with the scheme. The scheme may be amended at any time.
- 4.5 The Council's current Members' Scheme of Allowances is appended to the Council's Constitution and can be viewed on page 286:-  
<https://lewisham.gov.uk/mayorandcouncil/aboutthecouncil/how-council-is-run/our-constitution>
- 4.6 Before a Council makes or amends a scheme of members' allowances, it must have regard to the recommendations made in relation to it by its independent remuneration panel. When it agreed the existing scheme, members had regard to the recommendations of the London Councils Independent Remuneration Panel dated January 2018. To assist the Council in applying the recommendations in that document to the Lewisham context, the Council commissioned a further report from Sir Rodney Brooke, who chairs that Panel. In agreeing the scheme that is now in existence, the Council also had regard to his report.
- 4.7 Members of the Council are now asked to consider whether to introduce a provision for paid parental leave for councillors into its scheme of members' allowance. In doing so, they are reminded of the legal requirement to have regard to the current recommendation of the London Councils Independent Remuneration Panel, entitled "The Remuneration of Councillors In London 2018 – Report of the Independent Panel"
- 4.8 That document states under the heading "Barriers to being a councillor" "It is important that obstacles to becoming a councillor should be removed wherever possible.....We also repeat our belief that members' allowances schemes should allow the continuance of Special Responsibility Allowances in the case of sickness, maternity and paternity leave in the same terms that the council's employees enjoy such benefits (that is to say they follow the same policies)"
- 4.9 The Council's employee scheme for maternity and paternity is complex but is in line with National Terms and Conditions and legislation. It provides for

maternity pay for a year's leave of absence for those with one year's qualifying service by the 11<sup>th</sup> week of pregnancy:-

- 90% of salary for first 6 weeks inclusive of statutory maternity pay (SMP)
- 50% of salary plus SMP for the next 20 weeks or 90% of average weekly earnings (AWE)
- SMP or AWE for next 13 weeks
- Nil pay for the remaining 13 weeks

Those failing to return to work for less than 3 months are required to repay the 20 weeks half pay.

4.10 For those with less than one year's service but who qualify for SMP (26 week's service with Lewisham at 15<sup>th</sup> week before the expected week of childbirth) there are reduced benefits of:

- 90% of salary for 6 weeks (SMP) or 90% of AWE if higher
- 33 weeks lower rate SMP (or 90% of AWE if lower)

4.11 Those with less than 26 weeks service receive 2 weeks at 100% salary but no SMP, but may be able to claim Maternity Allowance from the Benefits Agency

4.12 The Council's employee scheme provides for 2 weeks paternity pay.

## **5 The status of members**

5.1 By definition, any scheme for members' parental leave will differ in some respects from that applying to employees as there is a different legal framework applying to both. Members are not employees and replacement maternity cover for members who are in receipt only of basic allowance may not be obtained unless the member resigns and an election is held.

5.2 Fellow ward members may need to cover for ward based work in the absence of a member on parental leave for example. Examples from elsewhere in London show that some have adopted schemes which mirror the employee scheme, whilst others have a more bespoke scheme.

## **6 Schemes elsewhere**

6.1 If members are inclined to introduce a members' parental leave scheme, they need to decide on its terms. Some Councils have followed the recommendation of the IRP. Officers have collated examples which have been adopted elsewhere and might be considered as an option for the way forward if Members decide to adopt a parental leave scheme. Enquiries of the Local Government Association suggest that a number of authorities have adopted the scheme appearing at Appendix 1. They are:-

- Southampton City Council,
- Sunderland City Council,
- Lambeth Council,
- Islington Council,
- Newcastle City Council,
- Corby Borough Council,
- Lincoln City Council,

- Gloucester City Council

and that several other councils are considering doing so. Officers have examined the Members' Scheme of Allowances appearing in the Constitutions on the websites of those authorities listed above and this research has shown that in some instances the Council's scheme of members' allowances has been amended to incorporate parental leave.

## 6.2 Other examples of practice elsewhere include:-

### **Camden**

All members continue to receive basic allowance in full in the case of adoption, maternity and sickness for as long as these periods last. Members entitled to a special responsibility allowance continue to receive that allowance for periods of maternity, paternity and sickness. A replacement to cover may be appointed for the period of absence and depending on the circumstances may be entitled to claim an SRA. Where the SRA in question relates to the Cabinet, the appointment if necessary will be made by their leader. The payment of any SRA will depend on the Member retaining the post and any substitute appointment being on a temporary basis only. After 6 months leave continued payment will be reviewed with the option for a 6 month extension. There is no provision for paternity on the basis that the scheme is designed to reflect the employee scheme which limits paternity leave to 2 weeks so it was not deemed necessary.

### **Croydon**

Their Scheme of Members' Allowances provides that Special Responsibility Allowances will continue to be paid in case of sickness, maternity and paternity leave in the same terms that council employees receive those benefits.

- 7 Members are now asked, having considered the recommendations of the London Councils Independent Remuneration Panel to decide on whether they wish to include a parental leave policy in its Scheme of Allowances and if so its terms. If they wish to depart from the recommendation of the IRP they must be satisfied that there are sound reasons for doing so, and that the reduction of the barrier to politics which the current scheme represents is best reduced by a different scheme

## **8 Financial implications**

- 8.1 In respect of paternity leave there will be no financial implications as for two weeks of entitlement it is assumed unlikely formal cover arrangements will be required or put in place for paternity leave.
- 8.2 In respect of maternity leave the financial implications can only be estimated as the number of people taking up the entitlement will vary and there are options in respect of the cover arrangements that may be put in place.
- 8.3 The policy will only impact the Special Responsibility Allowance (SRA) as all Councillors receive the same basic allowance. For each case:

- If the cover put in place involves a Member with an existing SRA on the same or higher 'level' there is no financial implication as only one SRA can be claimed per Member.
- If the cover put in place involves a Member without an SRA or on a lower one, then the financial implication will be the cost of the difference for the duration of the maternity leave, usually for up to 6 months but in exceptional circumstances up to 12 months.

8.4 The table below illustrates two possible scenarios for the additional costs to cover a post per case of maternity leave: 1) the maximum difference (a Councillor with no SRA covers the post); and 2) the SRA difference for the cover acting one SRA 'level' higher (the more likely situation).

| <b>Member Allowances</b>                 | <b>SRA</b> | <b>Basic</b> | <b>Total</b> | <b>Maternity cover</b>                                      |
|--|------------|--------------|--------------|---|
|  |            |              |              | <b>Maximum cost - i.e. cover from Councillor</b>            |
|  |            |              |              | <b>SRA</b>  |
|  |            |              |              | <b>1st six</b>  |
|  |            |              |              | <b>months</b>   |
|  |            |              |              | <b>£'000</b>  |
| Mayor                                    | 68         | 10           | 78           | 34  |
| Deputy Mayor                             | 41         | 10           | 51           | 21  |
| Cabinet                                  | 15         | 10           | 25           | 8   |
| Chair of O&SC                            | 12         | 10           | 22           | 6   |
| Chair                                    | 6          | 10           | 16           | 3   |
| Councillor                               |            | 10           | 10           |   |
|  |            |              |              | <b>Assume seniority - i.e. cover one SRA 'level' higher</b> |
| Mayor covered by Deputy Mayor            |            |              |              | 14  |
| Deputy Mayor covered by a Cabinet member |            |              |              | 13  |
| Chair of O&SC covered by Chair           |            |              |              | 3   |
| Chair covered by another Councillor      |            |              |              | 3   |
| Councillor                               |            |              |              |   |

NB The figures in the above tables would double if an extension of a further six months leave were agreed by full Council in exceptional circumstances.

- 8.5 In addition, where maternity leave is taken the Council will seek to recover what monies may be due from the government in the form of Statutory Maternity Pay (SMP) to offset the costs to the Council.
- 8.6 The net costs – the SRA difference for the person covering less the SMP for the person on maternity – will be met from the Members allowances and development budget in the financial year in which they fall due. Any pressure on this budget, from a higher than expected number of Councillor taking maternity leave or the costs of cover for this leave, will need to be met from corporate resources on a once-off basis.

## **9 Legal implications**

- 9.1 These are generally contained in the body of the report. However particular attention is drawn to several matters. The requirement for any parental scheme providing for the payment of SRA during parental leave must be incorporated in the Members Scheme of Allowances, which must be publicised and available for public inspection.
- 9.2 Even if the Council introduces a parental leave scheme, it will still be necessary for any member on such leave to attend at least one Council meeting in any period of 6 consecutive months (and if they are a member of Mayor and Cabinet to attend at least one Mayor and Cabinet meeting in that 6 month period) to avoid a casual vacancy arising, unless the Council before the expiry of that period approves the reason for the absence. The scheme would not affect the legal position on attendance.
- 9.3 Generally the law and the Council's Member Code of Conduct would prohibit participation by any member in consideration of any matter in which they have a disclosable pecuniary interest. However, voting on members' allowances is an exception to this general principle.
- 9.4 The Equality Act 2010 (the Act) introduced a new public sector equality duty (the equality duty or the duty). It covers the following nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 9.5. In summary, the Council must, in the exercise of its function, have due regard to the need to:
- (a) eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
  - (b) Advance equality of opportunity between people who share a protected characteristic and those who do not;
  - (c) Foster good relations between people who share a protected characteristic and persons who do not share it.
- 9.6. The duty continues to be a "have regard duty", and the weight to be attached to it is a matter for the decision maker, bearing in mind the issues of relevance and proportionality. It is not an absolute requirement to eliminate unlawful discrimination, advance equality of opportunity or foster good relations.

- 9.7. The Equality and Human Rights Commission has recently issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled “Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice”. The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the equality duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found at:  
<https://www.equalityhumanrights.com/en/publication-download/technical-guidance-public-sector-equality-duty-england>
- 9.8. The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty:
1. The essential guide to the public sector equality duty
  2. Meeting the equality duty in policy and decision-making
  3. Engagement and the equality duty
  4. Equality objectives and the equality duty
  5. Equality information and the equality duty
- 9.9. The essential guide provides an overview of the equality duty requirements including the general equality duty, the specific duties and who they apply to. It covers what public authorities should do to meet the duty including steps that are legally required, as well as recommended actions. The other four documents provide more detailed guidance on key areas and advice on good practice. Further information and resources are available at:  
<https://www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty-guidance>
- 9.10. Should the Council agree to adopt a parental scheme for members, it should go some way to advance equality between men and women who are councillors or who aspire to be so and ease some of the difficulties experienced by pregnant women and parents of young children who have been elected as councillors and encourage those who would not otherwise have stood for election.

## **Background papers**

Report to Council dated 3 October 2018 entitled Members’ Allowances

For further details please contact Kevin Flaherty, Civic Suite, Catford SE6.

**1. Leave Periods**

1.1 A Member giving birth is entitled to up to six months' parental leave from one month before the due date, with the option to extend to 52 weeks, by agreement of full Council in exceptional circumstances

1.2 In addition, where the birth is premature, the Member is entitled to take leave during the period between the date of the birth and the due date in addition to the 6 months period. In such cases any leave taken to cover prematurity of 28 days or less shall be deducted from any extension beyond the initial 6 months.

1.3 In exceptional circumstances, and only in cases of prematurity of 29 days or more, additional leave may be taken by agreement, and such exceptional leave shall not be deducted from the total 6 month entitlement.

1.4 A member shall be entitled to take a minimum of two weeks paternity leave if they are the biological father or nominated carer of their partner or spouse following the birth of their child(ren)

1.5 A Member who has made Shared Parental Leave arrangements through their employment is requested to advise the Council of these at the earliest possible opportunity. Every effort will be made to replicate such arrangements in terms of leave from the Council.

1.6 Where both parents are members of the Council, leave may be shared up to a maximum of 24 weeks for the first six months, up to a maximum of 50 weeks in exceptional circumstances and subject to the agreement of full Council. Special and exceptional arrangements may be made in cases of prematurity.

1.7 A member who adopts a child through an approved adoption agency shall be entitled to take up to 6 months adoption leave from the date of placement with the option to extend up to 52 weeks in exceptional circumstances subject to the agreement of full Council.

1.8 Any Member who takes parental leave is still subject to their legal duty under the Local Government Act 1972 to attend a meeting of the Council within a six month period (and if they are a member of Mayor and Cabinet to attend a meeting of Mayor and Cabinet in that period) unless the Council agrees to an extended leave of absence prior to the expiration of that six month period.

1.9 Any Member intending to take parental leave will be responsible for ensuring that they comply with the relevant notice requirements of the Council, both in terms of the point at which the leave starts and the point at which they return.



1.10 Any member taking parental leave should ensure that they respond to reasonable requests for information as promptly as possible, and that they keep officers and colleagues informed and updated in relation to intended dates of return and requests for extension of leave.

## **2. Basic Allowance**

2.1 All Members shall continue to receive their Basic Allowance in full whilst on parental leave.

## **3. Special Responsibility Allowances**

3.1 Members entitled to a Special Responsibility Allowance shall continue to receive their allowance in full while on parental leave.

3.2 Where a replacement is appointed to cover the period of absence that person shall receive an SRA on a pro rata basis for the period of the temporary appointment.

3.3 The payment of Special Responsibility Allowances, whether to the primary SRA holder or a replacement, during a period of parental leave shall continue for a period of six months (or a year if agreed by full Council in exceptional circumstances), or if sooner, the earliest of the Member who is taking leave being removed from post or the date of the next local election.

3.4 Should a Member appointed to replace the member on parental leave already hold a remunerated position, the ordinary rules relating to payment of more than one Special Responsibility Allowances shall apply.

3.5 Unless the Member taking parental leave is removed from their post at an AGM, or unless the Party to which they belong loses control of the Council during their leave period, they shall return at the end of their leave period to the same post, or to an alternative post with equivalent status and remuneration which they held before the leave began. This does not affect the legal right of the Mayor to remove a member from the Cabinet at any time or of the Council to remove a member from a post should there be grounds to do so.

## **4. Resigning from Office and Elections**

4.1 If a Member decides not to return at the end of their parental leave, they must notify the Council at the earliest possible opportunity. All allowances will cease from the effective resignation date.

4.2 If an election is held during the Member's parental leave and they are not re-elected, or decide not to stand for re-election, their basic allowance and any SRA will cease from the Monday after the election date when they would technically leave office.