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Maternity, Paternity, Adoption and Shared Parental Leave Policy

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Type of document	Policy
Target audience	All CWP staff
Document purpose	This document sets out the policy and procedure for dealing with circumstances linked to maternity, paternity, adoption and shared parental leave and other related matters

Approving meeting	People and Organisational Development Sub Committee
Implementation date	June 2018

CWP documents to be read in conjunction with	
HR2.6	Annual Leave Policy
HR3.3	Disciplinary Policy & Procedure
HR3.6	Flexible Working and Special Leave Policy
HR3.5	Managing Attendance Policy
GR22	Management of New and Expectant Mothers at Work
GR3	Risk Management Policy

Document change history	
What is different?	Policy has been updated to reflect current legislation. June 2018 policy updated to include information on Dual Approved Prospective Adopters (also known as Foster to Adopt) (see section 7.6)
Appendices / electronic forms	N/A
What is the impact of change?	N/A

Training requirements	There are no specific training requirements for this document.
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Financial resource implications	No
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External references
<ol style="list-style-type: none"> 1. Children & Families Act 2014 2. Equality Act 2010 3. Employment Rights Act 1996 4. Flexible Working Regulations 2014 5. Health & Safety at Work (Amendment) Regulations 1994 6. Maternity Protection Act 1994 7. Maternity Protection (Amendment) Act 2004

- 8. Maternity & Adoption Leave (Curtailement of Statutory Rights to Leave) Regulations 2014
- 9. Maternity Protection (Time off for Antenatal Classes) Regulations 2004
- 10. Shared Parental Leave Regulations 2014
- 11. Work & Families Act 2006
- 12. Changes to Adoption Leave & Pay, Department of Business & Innovation Skills, Technical Guidance, April 2015

Equality Impact Assessment (EIA) - Initial assessment	Yes/No	Comments
Does this document affect one group less or more favourably than another on the basis of:		
- Race	No	
- Ethnic origins (including gypsies and travellers)	No	
- Nationality	No	
- Gender	No	
- Culture	No	
- Religion or belief	No	
- Sexual orientation including lesbian, gay and bisexual people	No	
- Age	No	
- Disability - learning disabilities, physical disability, sensory impairment and mental health problems	No	
Is there any evidence that some groups are affected differently?	No	
If you have identified potential discrimination, are there any exceptions valid, legal and/or justifiable? No		
Is the impact of the document likely to be negative?	No	
- If so can the impact be avoided?	N/A	
- What alternatives are there to achieving the document without the impact?	N/A	
- Can we reduce the impact by taking different action?	N/A	
Where an adverse or negative impact on equality group(s) has been identified during the initial screening process a full EIA assessment should be conducted.		
If you have identified a potential discriminatory impact of this procedural document, please refer it to the human resource department together with any suggestions as to the action required to avoid / reduce this impact. For advice in respect of answering the above questions, please contact the human resource department.		
Was a full impact assessment required?	No	
What is the level of impact?	Low	

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1. Introduction

This policy sets out Cheshire & Wirral Partnership NHS Foundation Trust (the Trust) provisions for employees who intend to take Maternity, Paternity, Adoption and Shared Parental leave under Agenda for Change terms and conditions and/or in accordance with statutory rights.

2. Purpose

The Trust is committed to helping employees balance the needs of work and family life and supports and promotes choices for parents on how they choose to care for their child.

The purpose of this policy is to provide employees and managers of the rights and entitlements to Maternity, Paternity, Adoption and Shared Parental leave and to provide a clear understanding of the nature and period of leave, paid and unpaid together with general information that will apply in each circumstance.

3. Scope

This policy applies to all staff employed by the Trust including those who are seconded out to another organisation. It does not apply to employees seconded into the Trust or individuals engaged within the Trust such as agency workers or contractors.

4. Legal Requirements

- Children & Families Act 2014
- Children Act 1989
- Equality Act 2010
- Employment Rights Act 1996
- Flexible Working Regulations 2014
- Health & Safety at Work (Amendment) Regulations 1994
- Maternity Protection Act 1994
- Maternity Protection (Amendment) Act 2004
- Maternity & Adoption Leave (Curtailed of Statutory Rights to Leave) Regulations 2014
- Maternity Protection (Time off for Antenatal Classes) Regulations 2004
- Shared Parental Leave Regulations 2014
- Work & Families Act 2006

5. Linked Policies/Documents

- Agenda for change : NHS Terms and Conditions of Service Handbook
- CWP Maternity, Paternity, Adoption and Shared Parental Leave Toolkit
- Professional Registration Policy and Guidelines
- [HR2.6 - Annual Leave Policy](#)
- [HR3.3 - Disciplinary Policy & Procedure](#)
- [HR3.6 - Flexible Working and Special Leave Policy](#)
- [CWP Incremental Pay Progression Scheme](#)
- [HR3.5 - Managing Attendance Policy](#)
- [GR22 - Management of New and Expectant Mothers at Work](#)
- [GR3 - Risk Management Policy](#)

6. Section 1 – Maternity Leave

6.1 Introduction

All pregnant workers have statutory rights and it is the Trust's intention to ensure that individual employees are made aware of those rights, and advised how to exercise their rights at each stage.

Employees taking maternity leave may be entitled to paid leave depending upon their length of service. The payments may be made either in line with the NHS provisions or under the statutory maternity pay provisions or a combination of both.

6.2 Compulsory Maternity Leave

All pregnant employees are entitled to take 52 weeks maternity leave.

Employees are not permitted to work, including working from home, for the two week period immediately following the birth of their baby.

6.3 Statutory Maternity Leave and Pay

Women employed for a minimum of 26 weeks continuous service with the Trust prior to the end of the 15th week of expected childbirth are entitled to 39 weeks paid statutory maternity leave and 13 weeks unpaid leave, provided the conditions below are met:-

- Have average weekly earnings of not less than the lower earnings limit for the payment of National Insurance Contributions which is in force during your qualifying week calculated over the period of 8 weeks leading up to 15 weeks before the expected date of childbirth;
- Continue to be employed and pregnant (or to have given birth) by the 11th week before the expected week of childbirth;
- Provides a MATB1 certificate (from a midwife or GP) stating the expected week of childbirth and
- Gives proper notification of pregnancy in writing stating the intention to take maternity leave, including the start date.

Table 1

Statutory Maternity Pay: At least 26 weeks continuous service with CWP as at 15 th week before the week of expected childbirth	First 6 weeks	90% of average weekly earnings
	Following 33 weeks	Statutory Maternity Pay (or 9/10ths of a week's pay if this is less)
	Remaining 13 weeks	Unpaid

6.4 Occupational Maternity Leave and Pay

Employees will be entitled to both paid Occupational Maternity leave/pay providing they meet the following criteria:-

- Have 12 months continuous service with one or more NHS Employer at the beginning of the 11th week before the expected week of childbirth;
- Notified their line manager in writing before the end of 15th week before the expected date of childbirth, or if this is not possible, as soon as is reasonably practicable thereafter, including informing that she intends to return to work with the same or another NHS trust for a minimum of three months after her maternity leave has ended.

An employee who satisfies the conditions above and intends to return to work will be entitled to receive the following:

Table 2

Occupational Maternity Pay: 12 months continuous service with one or more NHS employer (with a break of no more than 3 months) at the beginning of the 11 th week before the expected week of childbirth	First 8 weeks	8 weeks full pay
	Following 18 weeks	Half full pay plus statutory maternity pay, providing the total amount does not exceed full pay
	Following 13 weeks	Statutory maternity pay
	Following 13 weeks	Unpaid

6.4.1 Employees to whom this entitlement applies are required to return for a minimum period of three months. The Trust has the right to recover monies owed by employees who subsequently fail to return to work for the NHS for a minimum of three months following their maternity leave.

6.4.2 Employees who satisfy the conditions above but do not intend to return to work with this Trust or another Trust for a minimum period of three months after her maternity leave has ended will be entitled to:-

Table 3

First 6 weeks	90% of average weekly earnings
Followed by 33 weeks	Statutory Maternity Pay rate (or 9/10ths of a week's pay if this is less)
Remaining 13 weeks	Unpaid

6.4.3 Where an employee has made an informed decision not to return to work prior to commencing maternity leave then the employee should provide in writing to their line manager that they intend to resign with effect from the date on which she goes on maternity leave. This will enable the employee to receive Statutory Maternity Pay but not the enhanced Occupational Maternity pay that would be required to be paid back at the end of the maternity leave period.

An employee who wishes to return to work before the end of her agreed maternity leave entitlement will need to give the Trust 28 days' notice of the date she wishes to return to work.

6.4.4 Breaks in service of less than three months shall be disregarded and employment with more than one NHS employer shall count towards a period of continuous service. Further categories where a break in service shall be disregarded can be found within the toolkit.

A break in service is a period between employments with NHS employers or more than 3 months will affect entitlement to occupational maternity pay.

6.5 Maternity Allowance

If an employee does not meet the qualifying conditions for Statutory Maternity Pay they will receive an SMP1 form from payroll stating the reasons for not meeting the qualifying conditions and may be eligible to receive Maternity Allowance. Maternity Allowance pays a standard weekly rate or 90 per cent of average gross weekly earnings (before tax), whichever is smaller.

Employees can claim Maternity Allowance when they reach the 14th week before the week in which the baby is due. Further information can be found on the Gov.uk website.

6.6 Calculation of Maternity Pay

Full pay shall be calculated on the basis of the employee's average weekly earnings in accordance with the earning rules for SMP purposes, subject to the following qualifications:

- In the event of a pay award or annual incremental award being implemented before the paid maternity leave period begins, the maternity pay should be calculated as though the pay award or annual increment had effect throughout the entire SMP calculation period. If such a pay award was agreed retrospectively, the maternity pay should be re-calculated on the same basis;
- In the event of a pay award or annual increment award being implemented during the paid maternity leave period, the maternity pay due from the date of the pay award or annual increment should be increased accordingly. If such a pay award was agreed retrospectively, the maternity pay should be re-calculated on the same basis;

- In the case of an employee on unpaid sick leave or on sick leave attracting half pay during the whole or part of the period used for calculating average weekly earnings in accordance with the earnings rules for maternity pay purposes, average weekly earnings for the period of sickness absence will be calculated on the basis of notional full sick pay.
- Any period of unpaid leave will not be counted in calculations for annual leave.

6.7 Fixed Term Contracts

Employees will have their contracts extended in order to receive the full 52 weeks of leave if the following qualifying conditions are met:-

- Have 12 months' continuous service with one or more NHS employer at the beginning of the 11th week before the expected week or childbirth *and*;
- Are subject to a fixed-term or training contracts which expire after the 11th week before the expected week or childbirth.

The 52 week period of leave includes paid contractual and statutory maternity pay as detailed in Table 2 and employers should notify their line manager of their intentions and their leave date.

- 6.7.1 If there is no right to return to work to be exercised because the contract would have ended if pregnancy and childbirth had not occurred, the normal repayment provisions will not apply i.e. employees will not have to repay their occupational maternity pay as they are not required to return to work for a minimum of 3 months.
- 6.7.2 Employees on fixed-term contracts who do not meet the 12 months' continuous service condition set out above may still be entitled to Statutory Maternity Pay.

6.8 General Information

6.8.1 Pre and Post Antenatal Care

- 6.8.1.1 All pregnant employees are entitled to reasonable time off for antenatal appointments. If these appointments fall during working hours, time off shall be paid at the normal rate. Attendance at such appointments must be agreed beforehand with the line manager who may request evidence of the appointments to be attended.
- 6.8.1.2 An employee who is a prospective father, spouse, civil partner or partner of a pregnant woman can take unpaid time off to attend up to two antenatal appointments. The maximum time for each appointment is six and a half hours.
- 6.8.1.3 Employees are expected where possible to attend work prior to or return to work following ante-natal appointments, the employee should discuss with their line manager any flexibility required in attending such appointments.
- 6.8.1.4 Women who have recently given birth may have paid time off for post-natal care e.g. attendance at health clinics.

6.8.2 Health & Safety Pre and Post Birth

- 6.8.2.1 An employee must notify their line manager of her pregnancy as soon as possible in order that a risk assessment is undertaken by the manager within 10 working days to safeguard the health of the employee and that of their unborn child or children. The measures taken will depend upon the type of work that is undertaken and the work environment. For further information refer to the Trust's policy on the Management of New and Expectant Mothers at Work.
- 6.8.2.2 If it is found or a medical practitioner considers that an employee or their child or children would be at risk if they were to continue with their normal duties the Trust will endeavour to provide temporary suitable alternative work for which the employee will receive their normal

rate of pay. Where it is not reasonably practicable to offer suitable alternative work the employee should be suspended on full pay.

6.8.2.3 The line manager should refer any expectant employee to the Occupational Health Unit if they have any concerns with regard to the workplace, the duties of the job or their health.

6.8.2.4 On return to work the line manager may be required to complete a further risk assessment for specific measures that may need to be taken account of, e.g. breastfeeding together with provision of suitable facilities.

6.8.3 Sickness Prior to Childbirth

6.8.3.1 If an employee falls sick prior to the intended start date of their maternity leave, and the sickness is unrelated to the pregnancy, the absence shall be treated as sick leave, and managed in accordance with the Trust's Managing Attendance Policy.

6.8.3.2 An employee who is absent from work due to pregnancy-related illness during the last four weeks before the expected week of childbirth will be entitled to treat this absence as the beginning of the Maternity Leave and will normally commence at the beginning of the fourth week before the expected week of childbirth or the beginning of the next week after the employee last worked, whichever is later.

6.8.4 Sickness Absence on Return from Maternity Leave

In the event of illness following the date the employee was due to return to work normal sick leave provisions will apply.

6.8.5 Miscarriage

Should an employee have a miscarriage before the 25th week of pregnancy, normal sick leave provisions will apply and or special leave provisions will apply in accordance with the Trust Managing Attendance Policy and/or Flexible Working and Special Leave policy will apply.

6.8.6 Still Birth

When a still birth occurs after the 24th week of pregnancy, the employee will be entitled to the same amount of maternity leave and pay as if the birth had been live. In the event of distressing circumstances the organisation encourages staff to make use of the Trust's staff counselling service.

6.8.7 Premature Birth

6.8.7.1 Where an employee's baby is born before the eleventh week before the expected week of childbirth and they have been absent from work on certified sickness absence during the actual week of childbirth, maternity leave will start the day after the day of birth.

6.8.7.2 Where an employee's baby is born before the eleventh week before the expected week of childbirth and the employee has worked during the actual week of childbirth, maternity leave will start on the first day of the employee's absence.

6.8.7.3 With the agreement of the line manager, if the employee's baby is born prior to the eleventh week before the expected week of childbirth, and if the baby is in hospital, the employee may choose to split her maternity leave entitlement. This would enable the employee to take an agreed short period of maternity leave immediately after their baby is born and then return to take the balance when the baby is allowed home from hospital.

6.8.8 Keep in Touch Days (KIT)

An employee may work for up to a maximum of 10 KIT days. The employee will be paid at their basic daily rate for the hours worked less appropriate maternity leave payment for KIT days worked. Working for part of any day will count as one KIT day. Neither line manager nor employee can insist upon these days being worked.

6.8.9 Returning to Work

6.8.9.1 An employee is not required to give notice if they are returning to work after the end of their full maternity leave. The employee has the right to return to their job under their original contract and on no less favourable terms and conditions.

6.8.9.2 An employee who wishes to return to work before the end of the agreed maternity leave entitlement must give their line manager 28 days' notice of the date she wishes to return.

6.8.10 Failing to Return to Work

6.8.10.1 If an employee does not return to work after maternity leave, having declared her intention to do so or fails to submit a copy of her letter of appointment to another NHS employer within 15 months of the beginning of her maternity leave, the finance department will reclaim from the employee a refund of the maternity pay she has received (except for any statutory payments to which she may be entitled). The refund must be repaid within 12 weeks.

6.8.10.2 Should the employee fail to advise the Trust that it is her intention not to return to employment as previously agreed this will be managed in accordance with the Managing Attendance Policy, and may ultimately result in the employee's dismissal from service.

6.8.11 IVF

The Trust's managing sickness absence procedure shall apply for employees who are sick due to undergoing IVF or other fertility treatment. The employee should discuss the situation with the line manager who may agree to an equal period of sick leave and annual leave.

7.0 Section 2 – Adoption Leave

7.1 Introduction

7.1.1 Adoption leave and pay are available to individuals who have the primary caring responsibility for the adopted child or to one member of a couple where a couple adopts jointly (the couple must choose which partner takes adoption leave). The partner of an individual who adopts or the other member of a couple who are adopting jointly may be entitled to paternity leave and pay or its equivalent.

7.1.2 This policy covers the adoption leave and pay rights where a child is matched and placed for adoption within the UK. The measures will also be available where a child has been adopted overseas although the detailed operation of the scheme may differ slightly for practical reasons.

7.1.3 This policy applies to placements of children who are aged under 18 and where that child is unknown to, or does not have an established relationship with the adoptive parents.

7.2 Adoption Leave

An employee who has adopted a child, or who is one of a couple who have jointly adopted a child will be eligible for adoption leave which will be no less favourable than that outlined under maternity leave with the same eligibility criteria and conditions applying.

7.3 Official Meetings

7.3.1 Employees are required to notify their line manager of the time of their meeting in advance of the meetings and provide evidence of appointments.

7.3.2 Prior to the placement of child, employees' are entitled to reasonable time off in order to attend official meetings in the adoption process. If these meetings fall during working hours, time off shall be paid at the normal rate.

7.3.3 In circumstances where there is an established relationship with the child, such as fostering prior to adoption, employees will be entitled to reasonable time off for official meetings.

7.3.4 Employees are expected where possible to attend work prior to or return to work following official meetings.

7.4 Notification of Adoption

7.4.1 An employee is required to give their line manager 7 days' notice of being notified by the Adoption Agency that they have been matched with a child.

7.4.2 The period of adoption leave may begin from the date on which the child is placed with the employee for adoption or from a fixed date up to 14 days before the expected date of placement, provided the required 28 days' notice is given.

7.4.3 The employee is required to give written notification and at least 28 days in advance of any change to the commencement date of adoption leave unless it is not reasonably practicable, in which case, notice must be given as soon as possible.

7.5 Disrupted Placements

In the event of an adoption being disrupted, time is provided to allow an employee time to come to terms with the ending of the placement or the child's death, before returning to work. It also gives time for the employee to give the requisite 8 weeks' notice of their return to work.

7.6 Dual Approved Prospective Adopters (also known as Foster to Adopt)

An employee is entitled to take adoption leave and pay from up to 2 weeks before the child is placed with the family.

7.6.1 Eligibility Criteria for Fostering to Adopt Leave

For an employee to be eligible for adoption leave, the dual prospective adopter must:-

- Be a local authority foster parent who has been approved as suitable to adopt the child that they will initially foster.
- Have been notified by the local authority of its decision to place a child with him/her.
- Have notified the local authority that they agree to the placement (initially for fostering) and the date it will take place.
- Give the correct notice to the Trust within 7 days of the employee being notified by the local authority or as soon as practicable.

7.6.2 Eligibility Criteria for Fostering to Adopt Pay

- 26 weeks continuous employment with the same employer at the 'qualifying week'.
- Earned on average, at least the lower earnings level (£116 a week) in the 8 weeks leading up to the date they were notified of a match with a child.
- Notified the Trust that they are entitled to statutory adoption pay and when this is to begin.

7.6.3 Qualifying Week

The qualifying week is the date that the dual approved prospective adopter is notified of a match and this means that the employee has been notified by the local authority that a child will be placed with them.

7.6.4 Notification requirements

The Trust must be notified of their intention to take adoption leave within 7 days of being matched with a child for adoption. Where this is not possible to give notice within this timescale the employee must give notice as soon as reasonably practicable.

7.6.5 When Adoption does not go ahead

In cases where a placement does not proceed to formal adoption entitlement to adoption leave will end 8 weeks after the child is removed from the family or at the end of their adoption leave, whichever is earlier. Entitlement to statutory adoption pay will also end at the 8 week point or earlier if 39 weeks of statutory adoption pay has already been taken.

Circumstances where adoption leave ends include where the dual approved prospective adopter has taken 52 weeks of adoption leave; returned to work (this does not include a KIT day); or where adoption leave has been curtailed to opt into shared parental leave.

7.6.6 Paternity leave

In cases of joint adoption, and in cases of joint adopters being eligible, a decision can be made between themselves as to who will take the adoption leave and pay and who will take the paternity leave and pay.

If a partner takes paternity leave when the child is placed with the family there will be no entitlement to additional one or two week's paternity leave when the adoption process begins.

7.6.7 Shared Parental Leave

Employees on adoption leave and pay can opt into shared parental leave and/or pay on condition that the eligibility criteria is met.

In cases where shared parental leave and pay has been opted for and the adoption does not go ahead, an employee will be entitled to take the shared parental leave that has been booked. Employees may reduce or cancel a period of shared parental leave on condition that the Trust is given 8 weeks' notice of the change. Leave that has not been booked will no longer be available.

8. Section 3 – Paternity Leave

8.1 Introduction

Employees are eligible for paternity leave if they have or expect to share responsibility for the baby's upbringing as husband or partner to the mother of the baby i.e. biological or adoptive parent. Paternity leave can also apply to nominated carers, same sex partners and adoptive parent partners.

8.2 Paternity Leave

8.2.1 An employee who qualifies for paternity leave may elect to take either one week's leave or two consecutive weeks' leave and will be paid at full pay if they:

- Have been continuously employed for 26 weeks or more by the end of the 15th week before the mother's expected week of childbirth (or would have satisfied that condition but for the fact that the child was born before the end of that 15th week, was stillborn after 24 weeks or pregnancy or has died);
- Is the child's biological father and has responsibility for the child's upbringing, or is the mother's husband, civil partner or partner (but not the child's biological father) and has the main responsibility (apart from any responsibility of the mother) for the child's upbringing;
- Has formally notified their manager of the date on which he/she intends to take paternity leave and, has produced evidence supporting their claim for paternity leave (for example, copy of the MAT B1 certificate/Adoption Matching Certificate).

8.2.2 Employees who are not eligible for occupational paid paternity leave will be granted unpaid paternity leave although they may be eligible to receive statutory paternity pay. Employees must still apply and payroll will provide the required forms to claim by the Department of Work and Pensions.

8.2.3 Paternity leave can commence on any day of the week and must be completed within 56 days of the actual birth of the child or if the child is born early, up to 56 days after the expected week of birth unless a prolonged stay in hospital delays the baby's return home.

8.2.4 Paternity leave can be used for:

- Attendance at the birth itself, including multiple births;
- Providing support and care for the newborn/adopted child, the mother and any other young children at home, either whilst in hospital, when the family leave hospital or in the weeks following the birth/placement;
- Compassionate leave in the event of neonatal death.

9 Section 4 – Shared Parental Leave

9.1 Introduction

9.1.1 Shared Parental Leave (SPL) is available to eligible parents whose babies are due or who will adopt a child on or after 5 April 2015.

9.1.2 SPL will be created when an eligible mother or adopter brings their maternity or adoption leave to an end early (i.e. curtailing the maternity or adoption leave). The untaken weeks of maternity or adoption leave can be taken as SPL if the mother/adopter or their partner is eligible for this, up to a maximum of 50 weeks.

9.1.3 Shared Parental Pay (ShPP) will be created where an eligible mother or adopter chooses to bring their maternity or adoption pay or maternity allowance to an end early (i.e. reducing the maternity or adoption pay period or the maternity allowance period). The period of untaken maternity or adoption pay or maternity allowance will become available, where applicable, as occupational parental pay, up to a maximum of 37 weeks.

9.2 Eligibility Criteria for Shared Parental Leave

9.2.1 To qualify for shared parental leave a mother/adopter 'must':

- Have a partner;
- Be entitled to maternity/adoption leave or to statutory maternity/adoption pay or maternity allowance and
- Have curtailed, or given notice to reduce their maternity/adoption leave or their pay/allowances.

A parent who intends to take shared parental leave 'must':

- Be an employee;
- Share the primary responsibility for the child with the other parent at the time of the birth or placement for adoption and
- Have properly notified their line manager of their entitlement and have provided necessary declarations and evidence.

A parent wanting to take shared parental leave is required to satisfy the 'continuity of employment test' and their partner must meet the 'employment and earnings test'.

Continuity of Employment Test	Employment and Earnings Test
The individual has worked for same employer for the last 26 weeks at the end of the 15 th week before the child's expected due date/matching date and is still working for the employer at the start of each leave period.	In the 66 weeks leading up to the baby's expected due date/matching date, the person has worked for at least 26 weeks and earned an average of at least £30 (as of 2015) a week in any 13 weeks.

- 9.2.2 There will be occasions where only one parent is eligible, for example, a self-employed parent will not be entitled themselves but they must still pass the employment and earnings test so their partner, if they are employed, may still qualify.
- 9.2.3 The employee is responsible for checking that they are eligible for SPL and ShPP. The line manager should grant leave and pay based on the information and declaration provided by the employee. Any subsequent discovery that ShPP was incorrectly paid the organisation will recover the wrongly paid amount as an overpayment of wages.
- 9.2.4 The line manager within 14 calendar days of receiving notice can request a copy of the child's birth certificate (if available), contact details of the employee's partner's employer and the employees must provide the information within 14 calendar days.
- 9.2.5 SPL can only be used after the mother has already returned to work or given notice to their line manager that reduces their maternity/adoption leave and confirmed when their maternity/adoption leave will come to an end. This notice is binding and only in certain circumstances can it be withdrawn.
- 9.2.6 An employee who meets the eligibility criteria and intends to take SPL must provide their line manager with a notice of entitlement to take SPL. The notice of entitlement must be submitted at least 8 weeks before the employee intends to take a period of SPL.

9.3 Timing of Shared Parental Leave

SPL can only be used after the mother/primary adopter has:

- [a] Returned to work following maternity/adoption leave; or
- [b] Given notice to their employer that reduces their maternity/adoption leave, confirming when their maternity/adoption leave will come to an end. This notice is binding and so cannot be withdrawn (except in exceptional circumstances).

9.4 Shared Parental Pay (ShPP)

- 9.4.1 Employees who qualify for SPL will not always be entitled to ShPP.
- 9.4.2 Eligible employees may be entitled to take up to 37 weeks ShPP, the actual entitlement will depend upon the amount by which the mother/adopter reduces their maternity/adoption pay period or maternity allowance period.
- 9.4.3 ShPP may be payable during some or all of SPL. The duration is dependent upon the length and timing of the leave.

9.5 Eligibility Criteria for Shared Parental Pay

9.5.1 In addition to meeting the eligibility requirements for SPL, an employee seeking to claim ShPP must further satisfy each of the following criteria:

- the mother/adopter must be/have been entitled to statutory maternity/adoption pay or maternity allowance and must have reduced their maternity adoption pay period or maternity allowance period;
- the employee must intend to care for the child during the week(s) in which ShPP is payable;
- the employee must have average weekly earnings for the period of eight weeks leading up to and including the 15th week before the child's expected due date/matching date or not less than the lower earnings limit in force for national insurance contributions;
- the employee must remain in continuous employment until the first week of ShPP has begun and
- the employee must give proper notification.

9.6 General Information

9.6.1 Booking Shared Parental Leave

9.6.1.1 The employee must notify their line manager of their entitlement to SPL and ShPP and can book leave at the same time or following notifying their manager of their entitlement to SPL and ShPP.

9.6.1.2 The employee is required to give their line manager at least 8 weeks' notice before the date in which they wish their SPL to commence and is required to submit appropriate notice.

9.6.1.3 The employee is entitled to submit up to three separate notifications this is inclusive of variations and cancellation notices with details of the leave they are intending to take. The notification can contain either 'continuous leave' e.g. a block of weeks or 'discontinuous leave' where the employee takes two or more weeks and the employee intends to return to work between periods of leave. SPL can only be taken in complete weeks but may begin on any day of the week.

9.6.1.4 Where there is concern over accommodating the notification the line manager may seek to arrange a meeting to discuss the notification with a view to agreeing an arrangement that meets both the needs of the employee and the Trust.

The line manager will consider a discontinuous leave notification but has the right to refuse it and if the leave pattern is refused the employee can either withdraw it within 15 days of giving it or can take the leave in a single continuous block.

9.6.2 Notification of opting-in to Shared Parental Leave

Once the mother has given notice to end maternity/adoption leave and the trust are informed of the employees entitlement to take SPL then the notice to end maternity leave is binding and cannot be withdrawn unless:

- Within 8 weeks of the mother submitting notice to end their maternity/adoption leave it transpires that neither parent qualifies for SPP or ShPP;
- When notice was given before birth, it may be withdrawn without a reason up to 6 weeks following the birth and
- Should the mother's partner die.

9.6.3 Changing How Shared Parental Leave is Divided

The employee must have notified their line manager of how much leave both the employee and partner intends to take as part of the entitlement notice. Allocation of leave can be varied at any stage.

9.6.4 Cancelling or Varying Booked Shared Parental Leave

An employee is required to give written notice to vary or cancel their leave and clearly state the change that is being sought. Any variation must be made at least 8 weeks before the dates varied begins and will count as a further notification.

If the employee has used up all their notifications the line manager is under no obligation to agree the variation or cancellation but could consider the request and decide whether it is reasonably practicable to grant it.

Where the line manager proposes a variation to the leave and the employee is agreeable then this will not count as a further notification. This should be confirmed in writing by the line manager.

9.6.5 Reasonable Contact

The line manager and employee should discuss in advance of the leave period, how and when contact should be made. It is the responsibility of both the line manager and employee to ensure that contact is maintained during the leave period.

9.6.6 SPLIT Days

9.6.6.1 Subject to agreement with the line manager, the employee can work up to 20 days shared parental leave in touch (SPLIT) days during SPL without losing entitlement to ShPP and without bringing the SPL to an end. Any days of work will not extend the SPL period.

9.6.6.2 The employee will be paid a proportion of their basic daily rate for the actual hours worked less appropriate maternity leave payment for SPLIT days worked.

9.6.6.7 Working for part of any day will count as one SPLIT day.

9.6.7 Effects on Shared Parental Leave

There will be occasions when employee's rights to take SPL can change:

[i] Early Birth & Special Circumstances

Where the employee's baby is born before the expected due date and the employee had booked to take SPL within the first 8 weeks of the due date, the employee may take the same period of time off after the actual birth without having to provide 8 weeks' notice. Where this situation arises the employee is required to submit a notice to vary their leave as soon as is reasonably practicable. This notice will not count as one of the employee's three notifications.

Any leave arranged after the first 8 weeks of the due date is still bound by the 8 week notice required to vary leave.

If the child is born more than 8 weeks before their expected due date and the notice of entitlement to SPL and/or a notice to book SPL have not yet been given then there is no requirement to give 8 weeks' notice before the period of leave starts. The notices should be given as soon as is reasonably practicable after the actual birth.

[ii] Death of the child before or during birth, or within the first year

Should the child die before the employee has submitted a notice of entitlement to take SPL then they cannot opt into SPL because a qualifying condition is caring for a child. The mother will remain entitled to maternity leave and the mother's partner could still qualify for statutory paternity leave.

If the employee has opted into SPL and booked leave, the employee will still be entitled to take booked leave. No further notice booking leave can be submitted and only one variation notice can be given to reduce a period of leave or to rearrange a discontinuous leave arrangement into a single block of leave.

An employee who is absent on SPL may cancel agreed SPL and return to work by giving their line manager 8 weeks' notice of their return to work.

[iii] Partner no longer caring for the child

An employee is required to inform their line manager in circumstances where the employee has booked SPL and are no longer responsible for caring for the child (unless the child has died). Entitlement to both SPL and ShPP will immediately cease.

Should the employee have any SPL arranged within 8 weeks of their entitlement ceasing, the line manager can still require the employee to take it as SPL if it is not reasonably practicable for the trust to have the employee in work. Any weeks of SPL arranged after 8 weeks of their entitlement ceasing must be cancelled.

The remaining parent continuing to care for the child will be eligible to take their SPL entitlement. If the other parent, who is no longer caring for the child had any SPL leave outstanding the remaining parent will only be able to transfer it into their own entitlement if a signed agreement is obtained from the other parent confirming a variation of leave entitlement.

[iv] **Death of a parent during the child's first year**

If either parent dies and the other parent is taking, or is entitled to SPL, then they will continue to be eligible. Any SPL that was due to be taken by the deceased parent may be transferred to the other parent if the other parent is eligible for SPL.

Where it is necessary for the other parent to take a further period of SPL or to vary a pre-agreed leave then notice may be given as soon as is reasonably practicable if 8 weeks' notice cannot be given. In circumstances where the employee has given three notices to take leave the employee will be allowed to submit another one further notice to book/amend SPL.

[v] **Multiple births/adoptions**

An employee will not be entitled to extra SPL or ShPP if they are expecting more than one child or in circumstances involving multiple adoptions that occur in a single placement.

9.6.8 Returning to work

9.6.8.1 An employee who has notified their intention to return to work is not required to give any further notification of return.

9.6.8.2 If the employee wishes to return to work earlier than the expected return date, the employee must provide a written notice to vary the leave and must give at least 8 weeks' notice.

9.6.8.3 This notice will count as one of the employee's three notifications. If the employee has already used three notifications to book and/or vary leave then the Trust is not required to accept the notice to return early but may choose to do so where reasonably practicable.

9.6.9 Fixed Term Contracts or Training Contracts

An employee subject to a fixed-term or training contract who meets the eligibility criteria set out in above will have his/her contract extended so as to allow him/her to receive the 50 weeks shared parental leave and shared parental pay providing the employee has submitted the required notifications prior to the end of the fixed term contract and they continue to meet the continuity of employment test and employment and earnings test.

9.6.10 Working whilst on Shared Parental Leave

Any employee considering undertaking any paid work, excluding SPLIT days whilst on shared parental leave must contact payroll to ascertain what impact this may have on the shared parental pay they receive.

9.6.11 Fraudulent Claims

Where there is suspicion that fraudulent information may have been provided or where CWP has been informed by the HMRC that a fraudulent claim was made, investigate the matter further in accordance with the Trust's Disciplinary Policy and Procedure.

Providing misleading or false information including claiming eligibility where no eligibility exists could result in disciplinary action being taken up to and including an allegation of gross misconduct.

The Trust reserves the right to bring any such cases to the attention of the MIAA.

10. General Information applicable to All Leave within this policy

10.1 Increments

Line managers will be required to take reasonable steps to ensure they are able to give consideration to an employee's pay progression on the relevant date. Incremental pay progression/dates will not be affected by paid or unpaid leave if the employee is compliant with the Trust's Incremental Pay Progression Scheme.

10.2 Childcare Vouchers

These are a tax and national insurance efficient way of paying for registered childcare for children 0-16 years. Employees may exchange part of their pre-taxed salary for childcare vouchers. This exchange is commonly referred to as a 'salary sacrifice' and further information can be found by contacting the Trust's childcare voucher provider Fideliti on 0800 2888727 or via the Trust's Payroll Department on 01244 364400.

An employee who has elected to participate in the childcare voucher scheme may continue to do so throughout any period of maternity leave. An employee may elect to continue this arrangement during any period of maternity leave for which she is not receiving occupational maternity pay. In such circumstances there will be no deduction from her statutory maternity pay or requirement to reimburse the Trust for the cost of the childcare vouchers accrued during this period of time.

Should the employee fail to return to work for the same, or a different NHS Trust, within 15 months of the beginning of her maternity leave, she will be liable to refund the cost of any vouchers accrued whilst not in receipt of occupational maternity pay.

Maternity pay is calculated on your 'average weekly earnings' during weeks 17 – 25 of your pregnancy. For the purpose of calculating your maternity pay your lower salary (after childcare vouchers have been deducted) will be used. By remaining on the voucher scheme throughout this period your maternity pay will be reduced.

To ensure that your maternity pay is not reduced, you should consider whether to leave the childcare voucher scheme by week 17 of the pregnancy.

10.3 Contractual Rights

During leave (both paid and unpaid) an employee retains all contractual rights, except remuneration.

10.4 Rotational Training Contracts

Where an employee is on a planned rotation of appointments with one or more NHS employer as part of an agreed programme of training, she shall have the right to return to work in the same post or in the next planned post irrespective of whether the contract would otherwise have ended if pregnancy and childbirth had not occurred. In such circumstances the employee's contract will be extended to enable them to complete the agreed programme of training.

10.5 Annual Leave and Bank Holidays

10.5.1 Annual leave accrued prior to or during a period of maternity leave to the end of the current leave year (including 31st March) should be taken before commencing maternity leave. Annual leave accrued during maternity leave in the next leave year (after 31st March) should be taken immediately on return from maternity leave. This must be authorised by your manager and will be subject to the needs of the service.

10.5.2 Paid or unpaid leave, will count as service for the purposes of any service qualification period for additional annual leave.

10.6 Professional Registration

An employee is responsible for ensuring that they maintain their competence and professional registration (where applicable) at all times during their paid and unpaid leave. Failure to maintain

competence will be dealt with in accordance with the Trust's Professional Registration Policy and Guidelines.

10.7 Pension

Pension rights and contributions shall be dealt with in accordance with the provisions of the NHS superannuation regulations. Any queries regarding pensions should be directed to the Pensions Department on 01244 364400.

10.8 Flexible Working

An employee may request to work flexibly upon returning to work, for example, to work fewer hours or to work different hours. Such requests should be applied for and will be considered in line with the Trust's Flexible Working and Special Leave Policy and service needs.

10.9 Terms And Conditions On Returning To Work

An employee returning from leave has the right to return to their job on the same terms and conditions unless it is not reasonably practicable in which case there is a right to return to a suitable and appropriate alternative job on the same terms and conditions.

10.10 Car Parking Payments

It is the responsibility of the employee to withdraw from any car parking scheme during their maternity, paternity, adoption or shared parental leave. Where payments for car parking is made, the employee should advise payroll that payments should cease during the leave period in order that the necessary arrangements can be made.

10.11 Lease Car Holders/Regular User's Allowance

Those employees taking either Maternity, Paternity, Adoption or Shared Parental Leave who are in receipt of Payment of Regular User Allowance will be continued for the month in which the employee commences leave and for the following 3 months before reducing to 50% of the original figure for a further 3 months or until the end of the leave, whichever is sooner. No further payment will be made if the car is out of use for six months or longer.

Employees not intending to return to work should have payment limited to the period of paid maternity/adoptions/shared parental leave.

Staff who have a lease car under the Trust's lease car scheme are entitled to retain the vehicle for the maternity leave period.

10.12 Work Mobile/Telephones/Laptops/Tablets/Vasco Tokens

Employees are advised to liaise with their line manager to agree appropriate arrangements for the return of work equipment.

10.13 Further Information

Issues may arise during maternity/adoption/paternity or shared parental leave which may not be covered by this policy. If you would like further information and advice on these matters or if you wish to clarify and discuss any other issues covered in the policy in greater detail please contact your locality HR Department.