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# Adoption Policy (Support Staff) 2020-2024

(This Procedure is derived from the WSCC Model Adoption Policy (NJC and Grey Book Mar 2015)

## **Turn your ear to wisdom and apply your heart to understanding (Proverbs 2:2)**

Broadwater is a Christian School. We will enable children to become wise, confident, successful learners with the motivation, skills and responsibility to make a positive difference in God's world. Our vision is underpinned by the values we live by.

*The Holy Spirit produces this kind of fruit in our lives: love, joy, peace, patience, kindness, goodness, faithfulness, gentleness, and self-control. There is no law against these things! Galatians 5:22*

It is this fruit that, in partnership with parents, we will instil in the children of our school.

## **Adoption Policy (Support Staff)**

### **1. Aim**

The aim of this policy is to outline an employee's entitlements to adoption leave, statutory and occupational adoption pay and to explain the steps that need to be taken by an employee and their manager before and during adoption leave.

### **2. Scope**

This policy applies to all employees of WSCC on permanent, temporary and fixed term contracts who are adopting a child.

The exceptions are centrally employed teachers and teachers employed in schools (whose terms and conditions are set out in the Schools HR Manual).

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

Adoption leave and pay is available to eligible employees:

- Who have a child placed with them for adoption (including "Foster to Adopt" arrangements) or, in cases of overseas adoptions, where the child enters Great Britain on or after that date; or
- Parental order parents in surrogacy arrangements.

It does not apply to special guardians, foster carers (except for "Foster to Adopt" arrangements) or to step parents adopting a child outside of an adoption agency framework.

### **3. Key Information**

Employees within the scope of this policy are entitled to the following benefits:

- 52 weeks' adoption leave, which must be taken as a continuous block.
- The right to return to their job, or a similar job on terms and conditions no less favourable, at the end of their adoption leave.
- Statutory adoption pay and/or occupational adoption pay, subject to meeting certain qualifying criteria.

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

Employees are entitled to 52 weeks' adoption leave, regardless of their length of service or hours worked. This must be taken as a continuous block.

The adoption leave is split into two parts, which attract different employment rights. The first 26 weeks' leave is referred to as ordinary adoption leave (OAL); the subsequent 26-week period is referred to as additional adoption leave (AAL).

Only one period of leave is available irrespective of whether one or more children are placed together at the same time.

The employee's partner may be entitled to paternity leave; please refer to the WSCC Maternity Support and Paternity Leave Policy for details. ("Partner" means the person who, at the date of the child's placement for adoption, is married to, the civil partner of, or the partner of the employee. This includes someone, of either sex, who lives with the adopter and the child in an enduring family relationship (but who is not the adopter's child, parent, grandchild, grandparent, sibling, aunt, uncle, niece or nephew).

### **Employment rights during ordinary adoption leave (OAL)**

- During OAL, the employee is entitled to benefit from all their normal terms and conditions of employment with the exception of pay.
- This period is counted as continuous service for the calculation of statutory employment rights (such as redundancy, unfair dismissal rights), pension rights and other contractual payments based on length of service. This means the employee continues to accrue annual leave (including entitlement to bank holidays) and this period is included in the calculation of entitlement to sick pay.
- On return from OAL an employee is entitled to return to the same job on the same terms and conditions as before their leave began.
- If there has been a re-grading or pay award applied to their post during the period they were on OAL then they are entitled to receive these as if they hadn't been away.
- An employee is protected from detriment and from unfair dismissal connected with taking adoption leave, regardless of hours worked or length of service.
- If an employee is made redundant whilst on adoption leave, they are entitled to be offered a suitable alternative vacancy if one arises.
- The HR Management Advice Team must be contacted before taking any action to dismiss an employee who is on OAL. They can be contacted on 033 022 22422 or email: [HRCST.HRMA@westsussex.gov.uk](mailto:HRCST.HRMA@westsussex.gov.uk).

### **Employment rights during additional adoption leave (AAL)**

- Employees are entitled to benefit from all their normal terms and conditions of employment with the exception of pay during AAL.
- Continuity of employment is preserved during additional adoption leave for the purpose of calculating entitlement to statutory employment rights (such as redundancy, unfair dismissal rights, notice requirements).
- The period of additional adoption leave will be treated by WSCC as continuous for the purpose of calculating contractual annual leave and contractual sick pay. This means the employee continues to accrue annual leave (including entitlement to bank holidays) and this period is included in the calculation of entitlement to sick pay.

- However, some benefits such as pensions will be different during the additional adoption leave period. If there is a period of unpaid adoption leave during this time, that unpaid period of leave may not be treated as continuous service unless an election has been made to repay for this period.
- On return from additional adoption leave the employee is entitled to return to the same job on the same terms and conditions as before their leave, as if they had not been absent. If this is not reasonably practicable then they should be offered a similar job on conditions that are not less favourable.
- An employee is protected from detriment and from unfair dismissal connected with taking adoption leave, regardless of hours worked or length of service.
- If an employee is made redundant whilst on adoption leave, they are entitled to be offered a suitable alternative vacancy if one arises.
- The HR Management Advice Team must be contacted before taking any action to dismiss an employee who is on AAL. They can be contacted on 033 022 22422 or email: HRCST.HRMA@westsussex.gov.uk.

## 5. Entitlement to Adoption Pay

There are two types of adoption pay and these have different qualifying criteria. An employee may qualify for none, one or both of the entitlements set out below.

An employee's entitlement to adoption pay will be closely related to their length of service at the week they are notified that they have been matched with a child.

### **Statutory Adoption Pay (SAP) – The basic statutory adoption pay scheme provided by the Government.**

To be entitled to statutory adoption pay, the employee must have:

- At least 26 weeks' continuous service with WSCC ending with the week they are notified that they have been matched with a child; and
- Average weekly earnings that are not less than the lower earnings limit for national insurance contributions.  
SAP is paid for a total of 39 weeks. This is split into two levels of payment:
- For the first 6 weeks of adoption leave the payment of SAP equals 90% of the employee's **average** weekly earnings, this is known as higher rate SAP.
- For the subsequent 33 weeks' employees are entitled to receive a fixed rate payment known as standard rate SAP (unless 90% of their weekly earnings is less than this rate).  
This fixed rate changes regularly and the prevailing rate can be found at [www.direct.gov.uk](http://www.direct.gov.uk)

Statutory adoption payments start when an employee begins their adoption leave. They will continue for a period of 39 weeks unless the employee returns to work before that time. If an employee is not entitled to statutory adoption pay they will still be able to take unpaid adoption leave. They may also be entitled to income support whilst on adoption leave. Employees

should contact their local Job Centre Plus or Benefits Office to find out whether they are entitled to this.

### **Occupational Adoption Pay (OAP) – An enhancement to the statutory scheme.**

To be entitled to Occupational Adoption Pay the employee must:

- Have one year's continuous local government service, by the week that they are notified that they have been matched with a child.

And

- Return to work for a minimum period of 3 months at the end of adoption leave. If the employee does not they will be required to repay any half pay paid to them. Once adoption leave ends, any period of return to work between blocks of shared parental leave (where taken) will count towards the 3 months return to work period; actual period(s) of shared parental leave will not count towards this 3-month return to work period.

(Local government service for the purposes of this policy refers to service with an organisation that is covered by the Redundancy Payments (Modification) Order. Please go to [www.lge.gov.uk](http://www.lge.gov.uk) to find out which organisations are covered by this order).

There are different rates of Occupational Adoption Pay for employees on green book and grey book terms. These are set out below:

#### **I. NJC employees on green book terms only:**

Occupational adoption pay is paid for a total of 18 weeks and is split into two levels of payment.

- 6 weeks at 90% of their **actual** weekly pay. If the employee qualifies for statutory adoption pay and this amount is more than the SAP payment, then the OAP payment is **inclusive** of the SAP entitlement. The employee **does not receive both**.
- Followed by 12 weeks at half pay. If the employee also qualifies for statutory adoption pay the statutory payment is made in **addition** to half pay. (Employees who qualify for both OAP and SAP will not receive more than full pay when the two are combined).

Where an employee is entitled to both statutory and occupational adoption pay the entitlements will run concurrently.

An employee can choose to make the half pay last for longer by having it paid over 20 weeks at a rate of 3/10ths of pay. The amount received overall is the same. If an employee is not sure whether they will return to work, they can ask for the half pay to be withheld until they have made a decision.

Employees **not** intending to return to work after adoption leave may be entitled to SAP and/or only the first 6 weeks of OAP at 90% of a week's pay if they meet the qualifying criteria.

#### **Employees of WSFRS on Grey Book terms and conditions only:**

- First week of adoption leave: the employee is entitled to Full pay, inclusive of their entitlement to Statutory Adoption Pay.

- 5 weeks at 90% of their **actual** weekly pay. If the employee qualifies for statutory adoption pay and this amount is more than the SAP payment, then the OAP payment is **inclusive** of the SAP entitlement. The employee **does not receive both**.
- Followed by 12 weeks at half pay. If the employee also qualifies for statutory adoption pay the statutory payment is made in **addition** to half pay. (Employees who qualify for both OAP and SAP will not receive more than full pay when the two are combined).

An employee can choose to make the half pay last for longer by having it paid over 20 weeks at a rate of 3/10ths of pay. The amount received overall is the same. If an employee is not sure whether they will return to work, they can ask for the half pay to be withheld until they have made a decision.

Employees **not** intending to return to work after adoption leave may be entitled to SAP and/or only the first 6 weeks of OAP at 90% of a week's pay if they meet the qualifying criteria.

## 6. Adoption Assessment Process Notifying management

Once an employee has made an application to become an adoptive parent and they are notified that they will be assessed by the Local Authority/ Adoption Agency they should inform their line manager. The purpose of this is:

- To ensure their manager is aware that the employee is going through the adoption process.
- To enable the manager and the employee to start planning for the employee's adoption leave

### Time off for the assessment process

The employee is entitled to take **paid** time off during working hours to attend any appointment arranged by, or at the request of, the adoption agency for the purpose of having contact with the child or for any other purpose connected with the adoption. The employee may take time off under this provision to attend up to five appointments and each of those appointments may last up to 6.5 hours. Where an employee has taken time off under these arrangements, he or she cannot take paternity leave instead of adoption leave.

- Their partner is entitled to take **unpaid** time off during working hours under this provision to attend up to two appointments and both of those appointments may last up to 6.5 hours

Any time off must be agreed in advance with the line manager. The line manager may ask to see confirmation of the course/meeting the employee is required to attend.

An employee is protected from detriment and from unfair dismissal connected with taking time off under this provision, regardless of hours worked or length of service.

## 7. Applying for Adoption Leave

Where possible an employee, should keep their line manager advised of when they think they may be commencing adoption leave so that arrangements can be made to cover the employee's absence.

When an employee is notified that they have been matched with a child, they should inform their line manager that they intend to take adoption leave. This Adoption Policy (NJC and Grey Book Mar 2015) should occur within 7 days of receipt of the notification of matching.

The earliest date adoption leave can start is 14 days before the date the child is expected to be placed for adoption with them, but an employee can work up to the day before the child is placed with them for adoption.

Employees applying for adoption leave should complete form ADO/LI as soon as possible. As this form also triggers the payment of statutory adoption pay, the form should ideally be completed no later than 28 days before the date they wish their statutory adoption pay to commence. An employee may alter the date they start their adoption leave providing the notification periods set out below, are followed.

Once completed the employee should give their manager the ADO/LI form and the matching certificate. The manager should take a photocopy for their own records, before both **original** documents are forwarded to HR Shared Services.

Adoption Pay cannot be paid until the matching certificate is received by HR Shared Services.

### **Starting Adoption Leave earlier or later than notified**

If the employee wishes to alter the planned date they want to start adoption leave they must notify their manager of the new date:

- 28 days before adoption leave was originally due to start.

Or

- 28 days before the new date s/he wants to start her/his leave.

Whichever of these two deadlines is the latest.

If an employee does not give the correct notification of their intention to take adoption leave and to claim statutory adoption pay, the County Council may delay the start of adoption leave and pay, until the correct notification is given.

### **8. During Adoption Leave Pension Contributions – LGPS, FPS, NFPS, FPS 2015 and NHS LGPS**

During any period of paid adoption leave (including any period when only statutory adoption pay is paid) an employee must continue to pay pension contributions on the actual pay they are receiving. Pension benefits will continue to accrue and will be calculated using your assumed pensionable pay (what their pay would have been for the period when they were on reduced contractual pay or no pay), rather than the amount of pensionable pay they actually receive.

If an employee intends to return to work after adoption leave, the employee can choose to pay additional pension contributions (APCs) for any period of unpaid adoption leave so that the period of absence will count in full for pension purposes.

The amount of pension lost is calculated as the appropriate fraction of an employee's assumed pensionable pay for that period of absence (i.e. 1/49th of an employee's assumed pensionable pay if they were in the main section of the scheme or 1/98th if they were in the 50/50 section).

If an employee wishes to purchase the amount of lost pension, they can do this at any time that they are contributing to the scheme, however if they make the election within 30 days of returning to work then the cost of the APC is split between them and the County Council. They will pay one-third of the cost and the County Council will pay the rest. This is known as a Shared Cost Additional Pension Contract (SCAPC). An employee can pay these additional contributions in a one-off lump sum or through regular payments from their wages.

An employee will need to request details of their lost pensionable pay from Employment Services, so early contact is advised to ensure they are able to make an election within the 30-day time limit.

The 30-day limit may be extended by the County Council if it is clear that the employee was unable to meet the normal time period due to circumstances beyond their control. For further information, an employee can refer to the County Council's discretions policy.

The maximum period of absence an employee can elect to buy back by a SCAPC is a period of 3 years.

An employee can obtain a quote and print off an application form to buy lost pension at The Local Government Pension Scheme.

If an employee elects not to buy back their lost pension, then this will not count for pension purposes.

Any additional pension contributions or contributions being made for pre-April 2014 ARCs or additional membership contracts, will remain payable throughout adoption leave. An employee must continue to pay the extra pension contributions they have contracted to pay as if they were not on leave. An employee needs to make arrangements with HR Shared Services for the contributions to be collected, so early contact is advised to ensure continuing cover. Where necessary, these can be collected from their pay when they return to work.

If the contributions are not made, then the contract to purchase additional benefits would cease and would not recommence on return from adoption leave.

## **FPS, NFPS and FPS 2015**

During any period of paid adoption leave (including any period when only statutory adoption pay is paid) an employee must continue to pay pension contributions on the actual pay they are receiving. Pension benefits will continue to accrue as if they were working normally on full pay. If an employee intends to return to work after adoption leave, the employee can choose to pay contributions for any period of unpaid adoption leave beyond the adoption pay period so that the period of absence will count in full for pension purposes. The contributions will be calculated on the rate of pay that the employee was receiving immediately before they commenced the period of unpaid adoption leave and will not be deducted until the employee returns to work. If an employee elects not to make contributions, then the period will not count towards pensionable service.

An election to pay for the unpaid contributions, must be made within 30 days of an employee's return to work. If an employee elects not to make contributions, then the period will not count towards pensionable service.

If an employee wishes to repay their contributions they need to contact employment services, so early contact is advised to ensure they are able to make an election with the 30-day time limit.

If you are a protected or tapered protected member of the NFPS and/or FPS the 30-day time limit may be extended if it is clear that you were unable to meet the normal time period due to

circumstances beyond your control. For further information, an employee can refer to the Fire Authority's discretions policy.

Any contributions being made for the purchase of additional membership, will remain payable throughout adoption leave. The contributions will be calculated on the rate of pay receivable, as if the individual was not on adoption leave. The additional benefits therefore continue to accrue in full. The individual needs to make arrangements with HR Shared Services for the contributions to be collected, so early contact is advised to ensure continuing cover.

If the contributions are not made, then the contract to purchase additional benefits would cease and would not recommence on return from adoption leave.

## NHS

During any period of paid adoption leave (including any period when only statutory adoption pay is paid) an employee must continue to pay pension contributions on the actual pay they are receiving. Pension benefits will continue to accrue as if they were working normally on full pay. If an employee intends to return to work after adoption leave, the employee can choose to pay contributions for any period of unpaid adoption leave beyond the adoption pay period so that the period of absence will count in full for pension purposes. The contributions will be calculated on the rate of pay that the employee was receiving immediately before they commenced the period of unpaid adoption leave and will not be deducted until the employee returns to work. If an employee wishes to repay their contributions, they need to contact employment services. If an employee elects not to make contributions, then the period will not count towards pensionable service.

Added years' contributions continue to be payable on the pensionable pay an employee was receiving prior to any reduction. If added years' contributions are not made for a period of 365 days or more the contract would cease and you would be unable to re-commence deductions.

Additional pension purchases continue at the normal rate. If additional pension contributions are not made for a period of 365 days or more the contract would cease and you would need to enter into a new contract with NHS Pensions.

Early Retirement Reduction Buy Out (ERRBO) applications continue to be payable on the pensionable pay an employee was receiving prior to any reduction. If ERRBO contributions are not made for a period of 365 days or more the contract would cease and you would be unable to re-commence deductions.

For more information, relating to adoption leave under the NHS please see their factsheet.

## Annual Leave

Employees continue to accrue annual leave during OAL and AAL. Employees are also entitled to accrue bank holidays during OAL and AAL. For part-time employees, accrual of bank holidays will be on a pro-rata basis using the same principles as in the WSCC Guidance on Bank and Statutory Holidays for Part-time Employees (namely, there will be a percentage reduction of entitlement to bank holidays depending on the employee's contracted hours).

It is important that employees agree with their manager in advance how they intend to take their annual leave, as there is no right to carry over into the next annual leave year more than the number of days stated in the employee's contract of employment.

Annual leave may, with the prior agreement of the employee's manager, be taken before the employee commences adoption leave, and/or immediately after adoption leave has finished. Annual Leave cannot be taken during adoption leave.

## Annual Leave - Term-time only employees

Entitlement to annual leave (including bank holidays) will continue to accrue during adoption leave. This entitlement will normally be off-set against any periods of school closure falling before or after the adoption leave period in each leave year. In cases where a term-time only employee does not return to work after a period of adoption leave and there is outstanding annual leave accrued, this can be taken as payment in lieu. For the purposes of calculating statutory Adoption Policy (NJC and Grey Book Mar 2015) annual leave entitlement, the leave year runs from the date of the anniversary of employment.

## Contact whilst on Adoption Leave

Whilst they are on adoption leave, the employee's manager should maintain reasonable contact with an employee to keep them updated about developments at work and matters concerning their job. The manager and employee should agree the level and frequency of contact prior to the employee commencing adoption leave.

The County Council has an obligation to keep an employee informed of any other information relating to their job that they would normally be made aware of if working. This may fall outside of the individual agreement referred to above.

## Keeping in Touch Days

Whilst on adoption leave, an employee may not carry out any work, without bringing the adoption leave to an end. This is with the exception of 'Keeping in Touch' days.

To assist an employee with their return to work they may, by **mutual agreement**, work up to ten 'Keeping in Touch' (KIT) days during the nil pay period of adoption leave to help them prepare for returning to work. A KIT day can be used to attend training sessions or meetings (providing these are related to the employee's job) as well as carrying out aspects of the employee's job. In exceptional circumstances a KIT day may be worked during the paid period of adoption leave. There is no obligation for an employee to work a KIT day if it is offered; likewise, an employee cannot insist that WSCC provide them with a KIT day.

Any work done by an employee on a particular day is counted as using one KIT day. For example, if an employee agrees with their manager that they will attend a training course and the course lasts two hours, this is counted as using up one of their KIT days. Likewise, another employee works a night shift and although this stretches over two dates this is counted as one KIT day.

An employee working a KIT day will be paid their normal hourly rate of pay for the hours actually worked. Claims for payment must be made through Employee Self Service or on a DOC 33 timesheet and authorised by the employee's manager. The employee must clearly state the date worked, and the actual number of hours worked on that day (lunch breaks are excluded).

**Green book employees:** If a KIT day is worked during the paid period of adoption leave an employee will be paid their adoption pay, plus the hours worked. The total payment will be limited to no more than what they would receive for a normal full day's pay.

**Grey book employees:** If a KIT day is worked while the employee is in the paid period of adoption leave, they will be paid their normal hourly pay for any hours worked in addition to their Statutory Adoption Pay.

KIT days do not extend the period of adoption leave. Payment for KIT days will always be made in arrears at the next available payroll.

## **9. Returning to Work Returning to work as notified**

An employee does not need to give notice that they wish to return to work if:

- They have elected to take the full 52 weeks' adoption leave.

Or

- When they applied for adoption leave, they specified an earlier return date and they return on this date.

There is no automatic entitlement to return to work on a part time basis. However, an employee is entitled to apply for a change in their working pattern/hours and to have this request seriously considered. Such a request should only be denied if there are clear business reasons. Please refer to the policy on Statutory Request to Work Flexibly for further information.

### **Returning to work earlier or later than originally notified**

If an employee wishes to return to work earlier or later than originally notified, they should discuss this with their manager as soon as possible. If they are in their ordinary adoption leave period, they should confirm their intention in writing and this must be given to their manager 7 days before they intend to return;

this period is extended to 21 days if they are in their additional adoption leave period.

Where an employee gives less than the required notice period, their return may be postponed to allow for the required 7- or 21-days' notice, but not beyond the end of the adoption.

Managers are responsible for notifying HR Shared Services of the revised return to work date.

### **Return to work is delayed because of sickness absence**

If an employee is unable to return to work at the end of the adoption leave period due to sickness, they should notify their line manager through the normal sickness absence reporting procedure. They will be required to provide medical certificates as normal. This absence will be treated as sickness absence and the usual sick pay provisions will apply.

### **Return to work is delayed due to an interruption to work by industrial action or other unforeseen circumstances not related to the employee**

If an employee is prevented from returning to work at the end of their adoption leave because of industrial action or other unforeseen circumstances not related to the employee, they may instead return to work when work resumes, or as soon as is reasonably practicable thereafter.

### **Taking annual leave or parental leave immediately following adoption leave**

An employee can agree with their manager to take annual leave (or parental leave) immediately following the end of adoption leave. The manager needs to ensure that they have maintained proper records and that HR Shared Services are informed so they can record the absence appropriately and ensure accurate pay calculations.

## **10. Adopting a Child from Outside the UK**

Employees adopting a child from outside the UK, and outside the laws of the United Kingdom, may be entitled to the same provisions as outlined above, providing they have received official notification from/or on behalf of the relevant domestic authority that the employee has been approved to be a suitable adoptive parent.

The scheme is broadly the same, but with the following differences to the notification requirements and the date adoption leave can start:

### **Notification requirements**

An employee must inform their manager:

- They have been matched with a child

and

- The date that the child is due to enter Great Britain within 7 days of receipt of notification of matching or of reaching 26 weeks' continuous employment, if the notification was received before this point.

An employee must:

- Give 28 days' notice of when they wish to commence adoption leave.
- Confirm and provide evidence to WSCC of the date the child entered Great Britain within 28 days of the child entering the country.

### **Starting Adoption Leave**

When adopting from abroad the earliest date adoption leave may start is from the date the child enters Great Britain and the latest date it can start is 28 days after the child has entered Great Britain.





Statutory adoption pay qualifying criteria



Occupational adoption pay qualifying criteria.

