



Bar Council Equality and Diversity Guides

Parental Leave

Why it is important to support parents at the Bar

Maintaining your career and having a family can be a huge challenge, particularly for women, at the Self-Employed Bar. Extended periods without earning can very quickly make it difficult to remain in practice. Often barristers are able to live off deferred income (aged debt) whilst on parental leave and struggle most on their return whilst rebuilding their practice, waiting for payment for work done and paying child care costs.

As a result the Bar loses many talented barristers when they choose to have a family. It is important that members of the Bar and Chambers do all they can to support those who wish to have a family.

Introduction

The Bar is changing and becoming more diverse. More women are choosing to come in to the profession and more are taking up tenancies with chambers. The modern family is changing too. In many families both parents want or need to work full time. Enabling barristers to manage their parental responsibilities whilst at the same time maintaining their place in chambers in order to be able to return to practice should ensure that chambers remains a viable entity with as diverse a pool of members as possible. The Bar Council believes that it is therefore essential for a modern and forward thinking set of chambers to have an up-to-date and clearly drafted parental leave policy (PLP).

The Bar Standards Board sets out in its Equality Rules minimum standards, but this guide aims to encourage barristers to adopt good and better practice wherever possible instead of the bare minimum. Accordingly, this guide aims:

- To provide a guide to chambers as to what a model PLP should look like and the key issues it should cover; and
- To suggest reasons why it is important for chambers collectively to engage with this issue for the benefit of chambers as a whole; and
- To provide a draft model PLP.

Language and Terms

- “Parental leave” refers to leave taken by the main carer of a child following birth or adoption. This could be the mother, father or adoptive parent of either sex.
- The term “Parent” will be used in this guide to cover those who are applying for leave because they are about to become a parent through pregnancy, adoption or surrogacy.
- The term “Carer” or “Main Carer” will be used to describe an individual, whether male or female who applies under chambers’ PLP for time to care for a dependant.
- A “dependant” for the purposes of this Guide will include an infant, child, young person or an adult with a disability.

What is a Parental Leave Policy (PLP)?

A PLP is a document setting out in clear terms the circumstances under which a tenant may apply for a leave of absence from chambers in order either to have a baby, or to start caring for a child through adoption or surrogacy.

The Bar Standards Board’s Equality Rules¹ require that barristers must take reasonable steps to ensure that their chambers has a parental leave policy covering:

- i. the right of a member of chambers to return to chambers after a specified period (which must be at least one year) of parental or adoption leave;
- ii. the extent to which a member of chambers is or is not required to contribute to chambers’ rent and expenses during parental leave;
- iii. the method of calculation of any waiver, reduction or reimbursement of chambers’ rent and expenses during parental leave;
- iv. where any element of rent is paid on a flat rate basis, the chambers policy must as a minimum provide that chambers will offer members taking a period of parental leave, or leave following adoption, a minimum of 6 months free of chambers’ rent;
- v. the procedure for dealing with grievances under the policy; and chambers’ commitment to review regularly the effectiveness of the policy.

TIP:

- Consult members of chambers on what they would have liked/would like to see in any PLP.
- Build support for your policy before you take any proposal to your management committee (identify key opinion formers and ensure they support your proposals).
- Consult widely with tenants before finalising your PLP or before drafting amendments to an existing PLP (either in a chambers meeting or via an email ballot). This will afford tenants an opportunity to comment on any proposals and air any concerns. Such a consultation, as well as providing potentially useful information for those who will be engaged in drafting the PLP, may well go some way to ensuring acceptance of the PLP

¹ <https://www.barstandardsboard.org.uk/about-bar-standards-board/equality-and-diversity/equality-and-diversity-rules-of-the-bsb-handbook/>

and its ethos throughout chambers. The new PLP or any final amendments to the PLP should be incorporated into chambers' constitution.

- It may assist as part of the consultation to establish how often the policy is used, how long parents have taken off and how many have come back (and whether part-time or full-time). This can help build the financial case for the policy and dispel some of the myths that can exist regarding the cost to chambers.

What should the PLP contain?

As a very minimum, a PLP should contain in clear terms the following:

- A clear description of who can apply under the PLP;
- The right to return following parental leave;
- Who the tenant should apply to for PLP and when;
- How long a tenant can remain on leave;
- Whether the tenant will be entitled to a rent-free period during the term of the PLP or a rebate, depending on chambers' arrangements for calculating rent;
- If the tenant is eligible for a rebate, how this will be calculated;
- Whether the tenant is required to contribute to any other element of chambers' rent and expenses during parental leave and, if so, how that is calculated;
- How chambers will deal with grievances under the policy, and how it will review the effectiveness of the policy.

Sample Rebate Calculation:

The rebate you receive is the amount of management fee you paid in the previous year.

i.e. If you paid £1000+vat management fee (@ 21% + vat on income received) for the whole of 2012 and you are taking leave for the whole of 2013, then you would receive approx. £733.33 (less any days in court/conference), which would be credited on your invoice over 12 months (e.g. $733.33 / 12 = 61.11$ per month).

If you receive any income payments during your leave then these are charged at the normal percentage.

Desirable additional terms of the model PLP:

- Provision for what kind of contact should be maintained between chambers and the tenant during the period of leave, to include ideally a discussion about *Keeping in Touch Days*²;
- Provision for the return of briefs allocated to the tenant before they commenced leave;
- Provision for the forwarding of mail and other notices delivered to the tenant at their chambers address;
- Discussion as to how the tenant's return to work will be managed and notified to the rest of chambers and to professional clients;
- Provision for the tenant to apply under the policy, for a longer extended period of leave, up to a stated maximum, in order to care for their child on a full-time basis, with a return to chambers within that stated period without a formal application procedure;

² <https://www.gov.uk/employee-rights-when-on-leave>

- How chambers addresses flexible working by tenants outside of formal parental leave.
- The policy should ideally extend to pupil members of chambers and to prospective pupils.

REMINDER:

Your chambers constitution will need to be amended to reflect your PLP.

TIP:

The Bar Council urges barristers to go beyond the BSB's minimum requirements (six months' flat rate rent waiver) and, for example, consider offering barristers undertaking parental leave:

- i. A further or total waiver of any rent contribution they may make as a percentage of their income (before, during and/or for a period after their maternity leave); and/or
- ii. Reduced or deferral of rent payments upon return when rebuilding their practice; and/or
- iii. Some form of rebate as set out above.

TIP:

Develop an economic case for your proposal. How much does it cost to train a member of chambers? i.e. what are the financial benefits of retaining members of chambers. What would it cost to provide additional support to members of chambers taking parental leave? What is the financial impact on individual members of chambers? Having a clear idea of the actual costs associated with your maternity policy will help you to build support and challenge those who may argue that the costs outweigh benefits.

Useful Links:

- <https://www.gov.uk/maternity-allowance>
- The equality officers at the Bar Council can offer advice. Please contact: Equality@barcouncil.org.uk

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APPENDIX 1: MODEL PARENTAL LEAVE POLICY

INTRODUCTION

1. This policy applies equally to members of Chambers who are parents or guardians or carers of children, or their partners. It should be read in conjunction with Chambers' Constitution, in particular Parental Leave (*para. ref.*), Support for Members (*para. ref.*), Part-Time & Flexible Working (*para. ref.*). Provision for pupil barristers is also contained within this policy.
2. Chambers will ensure that its staff is familiar with this policy through appropriate training.
3. Any barrister member is entitled to up to twelve months leave of absence from Chambers for the purposes of parental leave. The period of parental leave (but not the total period of exemption) may be extended by the Management Committee, on application.
4. Such leave is to be commenced within twelve months of birth of the child or the child entering a family (either as a result of, or with a view to the adoption of, that child).
5. During the period of any parental leave, a barrister member shall be entitled to a period of up to twelve months waiver of any flat rate element of rent and rebate of full Chambers Expenses on receipts as per (*paras. Ref. of Chambers' Constitution*). The exemption from, or rebate of, full Chambers Expenses under (*paras. Ref. of Chambers' Constitution*) shall be calculated by aggregating the Chambers Expenses paid by the member over the twelve months immediately preceding the commencement of parental leave and attributing 1/260th of that sum for each working day taken off as parental leave. The rebate will be off set against any Chambers Expenses due.
6. Full Chambers Expenses remain payable on fees received during any period of parental leave.

PRE-LEAVE

7. Any barrister member of Chambers intending to take time off from Chambers for the purpose of parental leave must give written notice to the Head of Chambers. Such notice shall be given at least one month prior to the expected date of birth or adoption of a child (or of a child joining the family with a view to adoption) although the Management Committee may exceptionally agree a shorter period of notice. Chambers recognises that there will be circumstances in which it will not be possible to give any notice (for example, a premature birth).
8. Chambers (and in particular Chambers' clerks) will accommodate time-off for ante-natal care and related medical and other appointments.
9. Prior to the commencement of leave, the barrister should meet with the Senior Clerk (or another appropriate clerk) to discuss and agree the following:
 - a. The level and type of contact s/he would like to have during parental leave;
 - b. Any outstanding cases and appropriate cover;
 - c. Any outstanding billing;
 - d. A proposed return date so that solicitors can be kept informed;
 - e. Arrangements for the forwarding of post and paying in of cheques;
 - f. Whether s/he should suspend her/his practising certificate. It should be borne in mind that while suspension means that the barrister member will be free from CPD

obligations for the period of suspension, it also means that s/he will not be able to take on any work during the period of leave.

DURING LEAVE

Contact with Chambers

10. In accordance with (*para ref.*) of the Constitution, Chambers through the Senior Clerk (or other appropriate person) will ensure that the barrister member is kept informed of chambers meetings, important chambers decisions, seminars or conferences to be held by chambers relevant to the barrister's practice and, where possible seminars held by outside organisations.
11. Where possible and with the agreement of the barrister member concerned, seminar materials should be posted to the barrister.
12. Unless otherwise informed by the barrister member, it should be assumed that s/he cannot attend chambers and team meetings and apologies for absence should be reflected in the minutes of those meetings. Minutes should be e-mailed to the barrister member where appropriate.

Management of pigeon hole

13. The barrister member's pigeon hole should be monitored by the clerks on a regular basis. Where necessary the contents should be posted to the barrister at least monthly at no cost extra cost to the barrister.
14. Any cheques received during parental leave should be paid directly into the barrister member's account unless other arrangements have been agreed.

Preparation for return to practice

15. The below measures are aimed at ensuring the member's return to Chambers after leave of absence is properly managed and planned and that steps are taken to ensure work is available for the member upon their return and to assist in every way practical in rebuilding the member's practice. This is the responsibility of both the barrister member and Chambers through the Senior Clerk.

Keeping in Touch (KiT) days

16. KiT days can be used for any work related activity e.g. training or team events. The content, frequency and number of KiT days should be designed to make the return to work following leave easier for the barrister member. They are taken during leave.
17. Prior to the commencement of leave, the barrister member in consultation with the Senior Clerk should agree the number of KiT days to be used subject to a maximum of 10 days. Agreement should also be reached as to the dates of the KiT days, although this should remain flexible.

18. During the period of parental leave, the barrister member should be reminded by the Senior Clerk (or other appropriate clerk) by e-mail of the dates of KiT days. These days should not affect the calculation of chambers parental leave benefit.
19. Where possible the agenda for the KiT days should be planned in advance. There should be at least one meeting with the head of the relevant clerking team which would be similar in content to a practice review. Consideration should be given to arranging a meeting with one or more barrister members of the relevant practice team.

Pre-return to practice meeting

20. At least three months prior to the barrister member's return to practice consideration must be given to the following:
 - a. Identification and appointment of a mentor who will assist the barrister member in settling back into practice and generally,
 - b. The likely working hours, the type, duration and location of any hearings that the barrister member may undertake. This should include any request for flexible or part-time working (*as per paras ref of the Constitution*),
 - c. Any need for the barrister member to attend a "refresher" course in their relevant practice area,
 - d. Review the barrister member's website profile in conjunction with the Senior Clerk (or other appropriate clerk) and Chambers marketing director, and where necessary up date the profile,
 - e. Announce the barrister member's return to practice on chambers' website,
 - f. Identify a list of solicitors and write to each of them announcing the barrister member's return to practice.

RETURN FROM LEAVE

21. On return to work each barrister member may work part-time or flexible hours to enable them to manage their family responsibilities as per Chambers' Constitution at (*para ref.*). Chambers recognises that some members may have a greater need for flexible working than others – for example, where a child has a disability or a medical condition.
22. Management Committee shall grant the request for such approval to the extent that it considers that it is in accordance with the reasonable needs of Chambers taking into account the Chambers Equality Code and the applicable law.
23. The following adjustments should be made so as to accommodate the needs of barrister members returning from parental leave:
 - a. The timing of Chambers meetings, team meetings and practice reviews should take into consideration childcare needs of barristers, and attendance at evening/weekend meetings should not be expected. Chambers should make child care provision for Chambers' meetings or any other meeting which take place over the weekend or in the evening and at which a member's attendance is expected or required,
 - b. Conference call facilities should be made available to barrister members wishing to participate in meetings from home,
 - c. A three-month review should take place, at which the barrister members' career and support needs are identified. Their "mentor", the Senior Clerk (or other appropriate clerk) and where requested, the team convenor, should be present.

24. Barrister members are responsible for ensuring their practising certificates and insurance are current upon return.

PUPILS

Prospective pupils

25. Upon application, Chambers may defer the commencement of pupillage of prospective pupils who become pregnant prior the commencement of pupillage for a period of up to 12 months.
26. Prospective pupils with existing childcare commitments may discuss with the Pupillage Committee how their working hours during pupillage can accommodate such commitments and should be advised of their entitlement to flexible working hours in accordance with this policy.

Current pupils

27. This part of the policy applies to all first and second six pupils who are parents or guardians or carers of children, or their partners. *Paras. Ref.* below (flexible working hours) also applies to third six pupils and squatters.
28. Pupils who become pregnant during pupillage may defer completion of the remainder of pupillage, subject to the requirements of Part V of the Bar Training Regulations.³
29. In the event that an exemption from the Bar Training Regulations is required, the pupil's supervisor shall be responsible for obtaining written permission from the Bar Standards Board.
30. Such a deferral shall not affect the overall pupillage award which shall be paid monthly during the period in which the pupil is undertaking pupillage. In the event of a rise in the pupillage award following deferral and prior to commencement of the deferred period the pupil shall be paid at the increased rate during the deferred period.
31. In the event of deferral and during the pupil's 'break' period, the pupil's supervisor shall be their point of contact with Chambers.
32. Chambers shall accommodate pupils' requests for flexible working hours in order to allow for childcare commitments. Such working hours should be discussed with the pupil's supervisor in order to ensure that the pupil is able to complete the work that is required of him or her.
33. The need to work flexible hours for this reason should not, as far as possible, affect the allocation of court work during the practising period of pupillage. Pupils should however be aware of the demands of the court schedule and the necessity for evening and last-minute briefs and should arrange childcare with this in mind wherever possible.
34. Pupils should be assured that any need to work flexible hours for reasons of childcare will not in any way affect their prospects of being recruited as a tenant pursuant to the Chambers' policy on recruitment of tenants from pupils.

³ i.e. that except with the written permission of the Bar Standards Board: (i) the non-practising period of pupillage must be undertaken for a continuous period of six months (regulation 31); and (ii) the practising period of pupillage must commence within 12 months of completion of the non-practising period and be completed within an overall period of 9 months (regulation 32).

REVIEW OF THIS POLICY

35. The Chambers' Equality and Diversity Officer will review annually the effectiveness of this policy, and where appropriate will make proposals for change to the Management Committee.

Helpful Information

- Bar Council Checklists and other links
- Information about 'keeping in touch days' can be accessed via the Directgov website
- Information regarding maternity allowance can be found at the Directgov website.