

# Buying and Selling Leave Policy

This policy outlines the procedure whereby staff can apply to buy extra annual leave up to maximum of 2 weeks per annum and sell up to a maximum of 1 week per annum.

Key Words:	Annual Leave, Buying, Selling	
Version:	1	
Adopted by:	Trust Policy Committee	
Date this version was adopted:	8 December 2020	
Name of Author:	Julie Hamore	
Name of responsible Committee:	Workforce Wellbeing Group	
Please state if there is a reason for not publishing on website:	N/A	
Date issued for publication:	December 2020	
Review date:	May 2023	
Expiry date:	1 December 2023	
Target audience:	All staff and managers	
Type of Policy		Non Clinical
Which Relevant CQC Fundamental Standards?	18	

## Contents

Equality Statement	3
Due Regard	3
Definitions that apply to this policy	4
1.0 Introduction and Purpose of the Policy	4
2.0 Eligibility / Scope	4
3.0 Buying Annual Leave	5
4.0 Selling Annual Leave	5
5.0 Process for Buying and Selling Annual Leave	6
6.0 Criteria and Considerations for Buying and Selling Leave	7
6.1 Buying leave	7
6.2 Selling Leave	8
7.0 Calculating the Value	9
8.0 Salary Sacrifice	9
9.0 Medical Staff	10
10.0 General Guidance and Advice	10
11.0 Roles and Responsibilities	11
12.0 Trainings Needs	12
13.0 Monitoring Compliance and Effectiveness	13
14.0 Links to Standards/Performance Indicators	13
15.0 References and Bibliography	14
<b>Appendices</b>	
Appendix 1 The NHS Constitution	15
Appendix 2 Key Individuals in Developing Document	16
Appendix 3 Due Regard Screening	17
Appendix 4 Application Form	19
Appendix 5 FAQs	22
Appendix 6 Flowchart of process	25
Appendix 7 Data Privacy impact assessment	26

## Version Control and Summary of Changes

Version number	Date	Comments (description change and amendments)
1.0	November 2020	First version of the policy and therefore no changes are applicable

### For further information contact:

HR Advisory Team – 0116 2957520

### Equality Statement

Leicestershire Partnership NHS Trust (LPT) aims to design and implement policy documents that meet the diverse needs of our service, population and workforce, ensuring that none are placed at a disadvantage over others. It takes into account the provisions of the Equality Act 2010 and promotes equal opportunities for all. This document has been assessed to ensure that no one receives less favourable treatment on the protected characteristics of their age, disability, sex (gender), gender reassignment, sexual orientation, marriage and civil partnership, race, religion or belief, pregnancy and maternity.

### Due Regard

LPT will ensure that Due regard for equality is taken and as such will undertake an analysis of equality (assessment of impact) on existing and new policies in line with the Equality Act 2010. This process will help to ensure that:

- Strategies, policies and procedures and services are free from discrimination;
- LPT complies with current equality legislation;
- Due regard is given to equality in decision making and subsequent processes;
- Opportunities for promoting equality are identified.

Please refer to due regard assessment (Appendix 3) of this policy.

**For further advice go to the LPT Due Regard Toolkit on e-source**

### Definitions that apply to this Policy

<b>Salary sacrifice scheme</b>	A tax efficient way of receiving staff benefits. Essentially, the employee gives up part of their taxable salary in return for another benefit (e.g. extra holiday).
<b>Buying Annual Leave</b>	To obtain extra annual leave by way of deductions from salary.
<b>Selling Annual leave</b>	Exchanging annual leave for extra salary.

## Duties within the Organisation

The Trust Board has a legal responsibility for Trust policies and for ensuring that they are carried out effectively.

The Trust Policy Committee is mandated on behalf of the Trust Board to adopt policies.

### 1.0 Introduction

Leicestershire partnership NHS Trust is committed to assisting its employees to achieve a healthy balance between their work and personal lives, in the best interests of both service delivery and the wellbeing of individuals.

All employees receive paid annual leave as set out in their contract of employment. This policy allows employees the flexibility to alter that entitlement, either by buying some additional leave or by selling some of their current entitlement. The scheme is about giving staff some additional choice and flexibility to their total reward package.

The scheme allows employees to buy extra annual leave up to the equivalent of 2 working weeks per annum and sell up to a maximum of the equivalent of one working week per annum and is designed to give employees extra flexibility to their working lives.

Extra holiday may appeal for all sorts of reasons – the chance to spend more time with family, special holidays or time to complete a special project. Alternatively, if employees wish to use less than their full leave entitlement, this scheme gives them the opportunity to exchange some of it for extra salary.

The policy arrangements are totally discretionary – employees do not have a contractual right to buy or sell leave. Support must first be obtained from the line manager and the final decision will be made by the Head of Service/Director linked to the criteria stipulated in Section 6. There is no right of appeal for unsuccessful applications.

The opportunity to buy annual leave will only arise once a year opening on 1 December and the deadline for applications is 10 January. Employees will need to plan ahead when considering their choices as **once a decision has been made to buy or sell annual leave for the year, employees cannot change their mind**. Therefore, if an employee has sold annual leave, and runs out of leave before the end of the year, they cannot buy back any extra days. Alternatively, if an employee has bought annual leave and cannot use it before the end of the year, they cannot sell it back and receive salary in lieu of benefit. Any outstanding leave at the end of the year will be managed in line with the Annual Leave Policy and can only be carried forward to a new leave year in exceptional circumstances.

#### 1.1 Purpose of this Policy

The Trust is committed to equality of opportunity for all. The purpose of the buying and selling annual leave policy is to provide staff with additional flexibility where possible, subject to operational requirements, in respect of planned time off work.

This document sets out the policy and procedure that managers and staff must follow when considering an application for buying and selling annual leave. For each of the options available, the benefits and considerations are provided.

## **2.0 Eligibility/Scope**

The policy applies to all permanent members of staff (regardless of contracted hours) subject to the following criteria:

- Completion of 26 weeks continuous service with the Trust and completed probation period with the Trust at the time of application.
- A minimum attendance level when selling leave (excluding annual and other Trust approved leave), ideally staff should not have exceeded the trigger points in the LPT management of Ill Health Policy and Procedure in the previous year. Note: this will be subject to the line manager's discretion
- Staff have bookable annual leave (bookable leave does not apply for term time only contracts/annualised hours contracts)
- Staff with fixed term contracts can only participate in the scheme if participation can be completed before the end of the fixed term.

## **3.0 Buying Annual Leave**

The principles for buying annual leave are:

- The opportunity to buy additional annual leave will only arise once a year.
- All applications must be received by 10 January for the following leave year. Approval must be processed by the 15 February to ensure annual leave booking in line with the Annual Leave Policy Please refer to the process stipulated in Section 5 for timescales and deadlines.
- Once the application has been approved employees cannot change their mind and are committed to the change for the leave year.
- Employees are able to buy up to an equivalent of two working weeks - A week relates to the exact amount of hours they are contracted to work per week as at 1 April.
- When an employee buys annual leave their salary will be reduced by the additional number of hours purchased, this figure will be calculated on the employees' individual basic salary as at 1 April. Should staff have a retrospective change to their pay the figure will be re-calculated. This is classed as a variation to their terms and conditions of employment. Specifically, that they agree to reduce their gross salary in return for a non cash benefit (additional annual leave).
- Holiday is not a taxable benefit, so there is no income tax or national insurance (NI) payable in the value of the days bought. Please refer to Section 8 for further details.
- The cost of the annual leave will be spread over the year in 12 monthly instalments.
- If an employee has bought holidays and cannot use them before the end of the leave year, they cannot sell them back and receive a salary in lieu of the benefit.
- Any additional annual leave bought will be managed as per the Trust's Annual Leave and General Public Holiday Policy and Local Annual Leave Guidance.

- If an employee leaves during the year in which they have purchased additional leave any instalments will be recovered from their final salary. If there are insufficient sums to recover this payment the employee will be invoiced.
- Although authorised/approved by Line Manager and the Head of Service/Director Service no request will be finalised until all national living wage checks have been completed to ensure compliance with registration.

#### 4.0 Selling of Annual Leave

Employees need to be aware that under the Working Time Regulations employers are required by law to ensure that adequate time off is taken by individuals. It is important therefore that employees do not deprive themselves of annual leave, which would result in a detrimental impact on health. Managers will be responsible for monitoring leave of staff and sickness levels to ensure that these do not increase. The law stipulates that employees are entitled to a minimum of 5.6 working weeks per year inclusive of statutory holidays (equivalent to 28 days). The entitlement for part-time workers is calculated on a pro-rata basis. No employee will be allowed to sell holiday which would mean that the total holiday taken in any one year would be less than the legal limit.

The principles for selling annual leave are:

- The opportunity to sell annual leave will only arise once a year.
- All applications must be received by 10 January. Please refer to the process stipulated in Section 5.
- Once the application has been approved staff cannot change their mind and are committed to the change for the leave year.
- Staff are able to sell up to an equivalent of one working week - A week relates to the exact amount of hours they are contracted to work per week as at 1 April.
- When an employee sells annual leave their salary will be increased by the number of hours sold, this figure will be calculated on the employees' basic salary as at 1 April. Should staff have a retrospective change to their pay the figure will be re-calculated. The additional salary will be subject to tax and NI in the normal way but will not be pensionable.
- If an employee has sold holidays and run out before the end of the year, they cannot buy back any extra days.
- The payment for the annual leave will be in a lump sum and paid on the next available payroll.
- Should staff leave before the end of the leave year, they may be required to pay back some of the lump sum if they have exceeded their annual leave allowance

#### 5.0 Process for Buying & Selling Annual Leave

The opportunity to buy and sell annual leave will only arise once a year. **All applications and all relevant documentation must be received by the line manager by the 10 January.**

To apply to buy or sell annual leave the following process must be followed (summarised in Appendix 3):

- Discuss the desired option with your line manager.

- Complete the “Buying and Selling Annual Leave” form in Appendix 1.
- Hand or email the form to the line manager for them to complete their part of the form which asks them to indicate their support for the request, linked to the criteria stipulated in Section 5.
- Completed forms need to be with the line manager **no later than 10 January**. Only in very exceptional circumstances will late applications be processed.
- The Head of Service/Director will make the final decision on whether to accept or reject an application linked to criteria stipulated in Section 6. Decisions will be based on the criteria set out in this guidance (including national living wage checks) and with consideration to whether the service can accommodate the request without it having a detrimental impact on the service.
- It is the responsibility of the Head of Service/Director to inform the line manager if the employee’s application has been approved or declined.
- It is the responsibility of the line manager to inform the employee of the outcome of their application – individuals will **not** be notified by the HR Department.
- It is the responsibility of the line manager to inform HR Employee Services via [Hrinputting@leicspart.nhs.uk](mailto:Hrinputting@leicspart.nhs.uk) of successful applications.
- For successful applications, HR Employee Services will inform payroll to make the appropriate adjustments to the employee’s salary.
- For successful applications it is the responsibility of the employee and the line manager to amend annual leave records accordingly.
- At the end of the leave year the employees’ holiday entitlement will revert back to the normal contractual amount.

### Declined Requests

If the request is declined, then this needs to be communicated to the employee formally, ensuring that the following issues are covered:

- The request has been declined
- Outlining the specific reasons why the request cannot be accommodated.

Reasons for declining the request may include:

- Takes pay below the national living wage, burden of additional costs
- Detrimental effect on the ability to deliver service
- Inability to cover additional annual leave due to high levels of vacancies
- Inability to re-organise work among existing staff
- Detrimental impact on quality or performance
- Insufficiency of work during the periods the employee proposes to work planned structural changes.

There is no right of appeal against declined requests.

## 6.0 Criteria and Considerations for Buying & Selling Annual Leave

All requests for buying and/or selling annual leave will be given full consideration by the line manager and Head of Service/ Director. The aim is to allow employees as much flexibility as possible whilst operating within the needs of service delivery. However, in making a decision, the following factors **must** be taken into account:

## 6.1 Buying Leave

There should be no additional cost implications for the Service. Considerations are detailed below:

- If cover is needed for the employee – ensure it is cost neutral
  - Assess if employees selling leave can offset any of the costs incurred in employees buying leave
  - Assess if there can be a pairing agreement linked to people buying and selling for cover arrangements
  - Ensure the additional leave does not result in a waiting list initiative or overtime
- There should be no detriment to service provision. Considerations are detailed below:
    - Ensure there is no loss of clinical/operational activity unless a planned reduction has been formally approved by the Service.
    - Whether there is an impact on key service targets and if these can be managed or mitigated
  - Unless there are exceptional circumstances employees should not be able to buy extra leave if they have already carried over leave from the previous year under the terms of the Annual Leave Policy. However, if the employee has carried over less than one working week, they can buy the difference up to a working week
  - Unless there are exceptional circumstances (e.g. where an individual's health may benefit from taking additional leave) employees are not able to buy extra leave if their current sickness absence rate at the time of applying (calculated on a rolling 12 month period) exceeds the trigger points within the LPT Management of Ill Health Policy and Procedure.
  - If a manager does not feel that they can support an employees' full request then they may consider suggesting a proportion they would feel able to accommodate. For example if two employees request to buy 37.5 hours each, but the service could only accommodate a maximum **combined total** of 37.5 hours additional leave, the manager may suggest that each receives 18.75 hours. The final decision regarding whether any requests (or a proportion of these) are approved or declined sits with Head of Service/Director.

## 6.2 Selling leave

- There should be no additional cost implications for the Service/Department. Considerations are detailed below:
  - Assess if there is a balance between employees selling annual leave and those wishing to buy annual leave which will offset costs for the service
  - Where there is not an equal number of those buying and selling leave, can the any cost be reasonably covered by the department budget?
  - Assess if the cost of staff selling annual leave can be offset by an expected reduction in d temporary staff spend (e.g. overtime, agency) and/or increased productivity.

- Unless there are exceptional circumstances employees are not able to sell leave if their current sickness absence rate at the time of applying (calculated on a rolling 12 month period) exceeds the Trigger points with the LPT Management of Ill Health Policy and Procedure.
- If a manager does not feel that they can support an employees' full request then they may consider suggesting a proportion they would feel able to accommodate. For example if two employees request to sell 37.5 hours each, but the service could only accommodate the purchase of a maximum **combined total** of 37.5 hours, the manager may suggest that each employee is able to sell 18.75 hours. The final decision regarding whether any requests (or a proportion of these) are approved or declined sits with the Head of Service/Director.

## 7.0 Calculating the Value

If an employee is selling holiday then the employee will receive additional pay for the additional holidays. If the employee is buying holiday then the employee will lose pay for the additional holidays bought.

**Employees are strongly advised to use the following formula to ascertain the cost of buying leave, based on their annual salary or the payment they will receive if selling leave:**

Annual salary ÷ 52.143 ÷ contracted hours per week = hourly rate

Hourly rate x by the number of hours bought or sold

Calculation for training grade medical staff (FY1, FY2, CT1-3.StR 4 – 6) based on normal working week (40 hours) as above.

The calculation for Career Grade medical staff (Consultants, Associate Specialists and Speciality Doctors) on Programmed Activities (Pas) is detailed below:

Annual salary ÷ 52.143 ÷ normal PAs per week = 1 PA pay

1 PA rate x the number of PAs purchased or sold

If buying additional leave the above figure will be divided into 12 monthly instalments

## 8.0 Salary Sacrifice

When employees buy annual leave this is processed as a salary sacrifice. Salary sacrifice is a tax efficient way of receiving staff benefits. Essentially, the employee gives up part of their taxable salary in return for another benefit (e.g. extra holiday).

Because the employee sacrifices gross salary it means the tax, national insurance contributions and pension contributions (if applicable) that are usually applied are reduced. However all these deductions are dependent upon the amount the employee earns.

Below is a simple example using fictitious rates to demonstrate how the salary sacrifice works for the buying of annual leave: The example shows that a £500 salary sacrifice only costs the employee £302.80.

<b>Salary Sacrifice – 1 weeks holiday</b>		
	£500 Reduction on Annual Salary in Majority of Employees	£500
Less	Pension Contribution (9.3%)	-£46.50
Less	National Insurance (12%)	-£60.00
Less	Tax (20%)	-£90.70
	Cost to employee	£302.80

Because an employee's gross pay is reduced as part of a salary sacrifice scheme there may be a resulting impact on other schemes and benefits such as the pension scheme and other schemes calculated on contractual pay such as maternity pay.

Employees **must** ensure that they read the attached 'Salary Sacrifice Schemes Guidance' document at Appendix 2 in order to fully understand the potential implications prior to making any application under this scheme.

## 9.0 Medical Staff

Career grade medical staff need to be aware that a full week for the purposes of buying and selling annual leave is classed as the PAs they are contracted to which includes any additional PAs (e.g. on-call). An example of this would be a consultant who is contracted to work 12 PA's per week and wishes to buy 1 week's annual leave – they would lose pay of 12 PAs.

Training grade medical staff calculations will be based on a 40 hour working week. The annual leave year for training grade medical staff begins on their anniversary of commencing with the Trust (usually the 1<sup>st</sup> August). Training grade medical staff would therefore need to submit applications for the buying or selling of annual leave by January 10 for the annual leave year commencing on the following 1 August.

## 10.0 General Guidance & Advice

All amended annual leave entitlements will be managed as per the Trust's Annual Leave and General Public Holiday Policy.

If an individual terminates their employment mid-year payroll are to be informed of the outstanding/overtaken annual leave via a termination (HR\*) form. Payroll then make the normal month's salary sacrifice deduction in the terminating month and take the remainder of the outstanding monetary value as a net deduction.

**For example:** an individual buys 37.5 hours x hourly rate £10.00      £375.00

This is then divided over a twelve month period (Sal Sac value)      £31.25

If the individual then leaves in the November of the financial year there is the usual £31.25 salary sacrifice value plus 4 x 31.25 (£125.00) as a net deduction on their final payslip.

## 11.0 Roles and Responsibilities

### Employee Responsibilities - All staff members are responsible for:

- To ensure that, on making a request to buy additional leave, they have not only considered their own individual needs and circumstances but those of the Trust, their team and colleagues. Enshrined in the application process is the need to consider the impact of their request on the team and service delivery and how this impact can be mitigated. If the request cannot be met in its entirety, it may be able to be partially met and both parties may need to consider compromise.
- To read and fully understand the policy guidance (including the salary sacrifice guidance at Appendix 2) ensuring they fully consider the financial implications for themselves of the deduction from salary prior to submitting an application to their line manager using the appendix 1.
- To ensure that **all** fields in Section 1 of the application form are completed correctly, missing fields may result in applications being declined.
- To give their application to line manager in a timely manner.
- To ensure any additional annual leave purchased is booked in accordance with the Trust Annual Leave and General Public Holiday Policy, and any locally agreed guidance, and is used in the leave year it is purchased.

### Line Managers Responsibilities

- Each line manager has a responsibility to ensure compliance with this procedure. Managers need to ensure that staff are aware that they have a right to make a request to buy or sell annual leave.
- Communicate to all staff the closing date of scheme to ensure timely applications.
- Treat all applications fairly and consistently. Part-time employees, regardless of their working pattern, will be treated on no less favourable terms than their full time equivalents.
- Think creatively about how they can accommodate the request being made and to consider all requests to buy or sell annual leave with a default position of accepting a request unless there is a clear objectively justified reason for not approving an application.
- Check Section 1 of the application form (completed by the employee) for accuracy and completeness. For example that the correct Service has been selected and that the employee has completed all fields.
- To complete Section 2 of the application form, indicating whether or not they support the employee's application, taking into account the considerations detailed within this policy and forward to Head of Service/Director in a timely manner.
- Once decisions have been made and cascaded to them by the Head of Service/Director, to communicate these decisions to all their employees who applied. This includes providing the rationale for any declined requests.

### In the case of successful applications:

- To ensure that the appropriate adjustments are made to the employees annual leave entitlement for any approved applications and a copy off application added to the personal file of the employee.
- To ensure all applications are submitted to the HR Employee Services Department via [Hrinputting@leicspart.nhs.uk](mailto:Hrinputting@leicspart.nhs.uk) by the deadline.

- Manage an individual's leave to ensure all additional leave is taken prior to the end of the leave year
- Ensure arrangements are in place to monitor and review all aspects of additional annual leave purchase scheme including any impact on the service.
- Any leavers mid-year are flagged to payroll using a Termination (H5\*) form.

### **Head of Service/Director Responsibility**

- To allocate a point of contact person for all applications within the Service and inform the HR Employee Services via [Hrinputting@leicspart.nhs.uk](mailto:Hrinputting@leicspart.nhs.uk) when requested and to ensure that the point of contact person collates all applications and complete the spreadsheet provided by the HR Employee Services.
- To communicate point of contact person's detail to all line managers under their Service.
- To review all applications made within their Service following national living wage checks and make the final decision regarding whether these will be approved or declined, taking into account the considerations detailed within the guidance and complete section 4 of application form.
- To ensure fairness and consistency in the application of this Policy.
- The column marked "Head of Service/Director Approval Y or N" on the spreadsheet is to be completed by Head of Service/Director using "Yes" to approve the application and "No" to decline application.
- To ensure that the allocated person sends all applications and completed spreadsheet to HR Employee Services in line with the defined timescales in order to allow for the appropriate adjustments to be made with payroll.
- To ensure that decisions are cascaded to the relevant line managers, along with a rationale for any declined requests. Line managers then have the responsibility for informing their staff of these outcomes.

### **HR Employee Services Team/ HR Department Responsibilities**

- To promote, communicate and raise awareness of the scheme through appropriate channels.
- To receive all completed application forms and completed spreadsheets from directorate allocated person.
- To provide a spreadsheet to each point of contact person with the relevant spreadsheet for completion.
- To inform payroll of the details of any approved applications in order for the appropriate adjustments to be made to their salary.
- To inform the HR Workforce team of all changes.
- To undertake national living wage checks on all applications for purchasing annual leave.

### **Allocated Persons Responsibilities**

- To collate all applications and complete spreadsheet as per guidance.
- To ensure all fields in section 1 are completed by employee, applications with missing information should not be accepted and returned to employee for completion.
- To ensure Head of Service/Director reviews all applications and completes section 4.

- To ensure that the Head of Service/Director authorises application in the column marked “Head of Service/Director Approval Y or N” on the spreadsheet and is to be completed by Head of Service/Director using “Yes” to approve the application and “No” to decline application.
- To send spreadsheet and completed application form to HR Employee Services via [Hrinputting@leicspart.nhs.uk](mailto:Hrinputting@leicspart.nhs.uk) within the specified timeline.

## 12.0 Training Needs

There is no training requirement identified within this policy

## 13.0 Monitoring Compliance and Effectiveness - complete the template below

Ref	Minimum Requirements	Evidence for Self-assessment	Process for Monitoring	Responsible Individual / Group	Frequency of monitoring
1	Employee uptake of the buying and selling leave scheme	Staff Opinion survey	Annual	Workforce and Wellbeing Group	Deputy Director of HR & OD
2	Application of this policy to be consistently applied to all staff	Number of grievances	Monthly	Workforce and Wellbeing Group	Deputy Director of HR & OD
3	Number of approved applications for Buying Leave	Monitor the increase in successful applications	Annual	Workforce and Wellbeing Group	Deputy Director of HR & OD
4	Number of approved applications for selling leave	Monitor the increase in successful applications	Annual	Workforce and Wellbeing Group	Deputy Director of HR & OD
5	Number of applications rejected	Monitor any grievances	Annual	Workforce and Wellbeing Group	Deputy Director of HR & OD

## 14.0 Standards/Performance Indicators

TARGET/STANDARDS	KEY PERFORMANCE INDICATOR
Care Quality Commission registration standards (outcome 14) <i>Supporting Workers</i> (21) of the Health & Social Care Act (2008) (Regulated Activities Regulations 2010 <a href="#">CQC essential standards</a> )	That the trust maintains compliance with CQC registration standards, this policy supports outcome standards 14

## **15.0 References and Bibliography**

The policy was drafted with reference to the following:

- *LPT Annual Leave Policy*
- *LPT Local Annual Guidance*
- *York Teaching Hospital – Buying and Selling Leave Policy*

## The NHS Constitution

The NHS will provide a universal service for all based on clinical need, not ability to pay. The NHS will provide a comprehensive range of services.

<b>Shape its services around the needs and preferences of individual patients, their families and their carers</b>	<input type="checkbox"/>
<b>Respond to different needs of different sectors of the population</b>	<input type="checkbox"/>
<b>Work continuously to improve quality services and to minimise errors</b>	<input type="checkbox"/>
<b>Support and value its staff</b>	<input type="checkbox"/>
<b>Work together with others to ensure a seamless service for patients</b>	<input type="checkbox"/>
<b>Help keep people healthy and work to reduce health inequalities</b>	<input type="checkbox"/>
<b>Respect the confidentiality of individual patients and provide open access to information about services, treatment and performance</b>	<input type="checkbox"/>

## Appendix 2

### Key individuals involved in developing the document

Name	Designation
Julie Hamore	Senior HR Advisor
Lisa Laws	Employee Services HR Manager
Daniel Norbury	Head of Employment Services

### Circulated to the following individuals for comment

Name
Directors / Heads of Service and Direct Reports
Operational HR Team
HR Employee Services Team
Equalities Team
Staffside
Workforce and Wellbeing Group

## Due Regard Screening Template

Section 1			
<b>Name of activity/proposal</b>		Buying and Selling Leave Policy	
<b>Date Screening commenced</b>		18 November 2020	
<b>Directorate / Service carrying out the assessment</b>		HR and OD Directorate	
<b>Name and role of person undertaking this Due Regard (Equality Analysis)</b>		Kirsty Whatmore, Senior HRBP	
<b>Give an overview of the aims, objectives and purpose of the proposal:</b>			
<b>AIMS:</b> To aim of this policy is to give all employees the flexibility to alter their annual leave entitlement, either by buying some additional leave or by selling some of their current entitlement. The scheme is about giving staff some additional choice and flexibility to their total reward package.			
<b>OBJECTIVES:</b> To ensure that there is a clear process around the buying and selling of annual leave and to provide guidance regarding the application of the policy.			
Section 2			
Protected Characteristic	If the proposal/s have a positive or negative impact please give brief details		
Age	Positive impact on all protected characteristics, as this policy applies to all staff.		
Disability	As above		
Gender reassignment	As above		
Marriage & Civil Partnership	As above		
Pregnancy & Maternity	As above		
Race	As above		
Religion and Belief	As above		
Sex	As above		
Sexual Orientation	As above		
Other equality groups?	As above		
Section 3			
<b>Does this activity propose major changes in terms of scale or significance for LPT? For example, is there a clear indication that, although the proposal is minor it is likely to have a major affect for people from an equality group/s? Please <u>tick</u> appropriate box below.</b>			
Yes		No	
High risk: Complete a full EIA starting click <a href="#">here</a> to proceed to Part B		Low risk: Go to Section 4.	√
Section 4			
<b>If this proposal is low risk please give evidence or justification for how you reached this decision:</b>			
The policy is low risk as the Trust has put in clear guidance to support decision-making in regards to requests to buy or sell leave. The policy is to provide further options and support to employees to enhance work life balance and to provide greater flexibility around their Total Reward package.			

<b>Signed by reviewer/assessor</b>		<b>Date</b>	18 Nov 2020
<i>Sign off that this proposal is low risk and does not require a full Equality Analysis</i>			
<b>Head of Service Signed</b>		<b>Date</b>	18 Nov 2020

To be returned by the 10 January

<b>Buying &amp; Selling of Annual Leave Application Form 2020/21</b>			
<b>Section 1: For completion by the employee: All information to be completed.</b>			
<b>Surname</b>		<b>First Name</b>	
<b>Job title</b>			<b>Band</b>
<b>Work address</b>			
<b>E-mail</b>		<b>Phone number</b>	
<b>Directorate</b>		<b>Line manager</b>	
<b>Base</b>		<b>Ward/Department</b>	
<b>Assignment Number</b> <small>(8 digit number and can be found on your payslip)</small>			
<b>Contracted hours of Employment</b>			
<b>Buying Leave</b>	I would like to request to <b>buy</b> _____ hours annual leave		
On approval of request to buy annual leave, I authorise a variation in my contract of employment in that there will be a reduction in my gross annual salary in return for a non-cash benefit of additional annual leave and that the deduction would be made over a 12 month period.			
<b>Selling Leave</b>	I would like to request to <b>sell</b> _____ hours of my annual leave entitlement.		
On approval I will forgo this amount of leave from my annual leave entitlement and that the Trust will make payment in consideration of the loss of leave. This payment will be made over a 12 month period.			
It may not be possible for the full amount requested to be authorised, however a proportion may be authorised. E.g. requested 37.5 hours approved 18.75 hours instead. Please tick this box if you <b>would not</b> wish to accept a lesser proportion of your request, the request would then be declined <input type="checkbox"/>			
<b>Please indicate why you are making an application to either buy or sell annual leave</b> <small>(please only chose one option, the one that best describes your reason for applying)</small>			
<b>Buy</b>		<b>Sell</b>	
More time to spend with family	<input type="checkbox"/>	Do not require full leave entitlement	<input type="checkbox"/>
Travel	<input type="checkbox"/>	Would prefer to have extra money	<input type="checkbox"/>
Home improvements	<input type="checkbox"/>	Other (please specify)	<input type="checkbox"/>
Other (please specify)	<input type="checkbox"/>		

**To be returned by the 10 January**

<b>Section 2: To be completed by employee</b>	
<b>Salary Sacrifice - Important information</b>	
<p>The new national NHS pension scheme is now based on career average earnings, rather than final salary. Your participation in a salary sacrifice scheme may affect your NHS pension, as salary sacrifice reduces the basic salary that your pension is based on.</p> <p>The Trust and its officers do not give pension advice. You are strongly advised to consider the impact of the reduced salary due to salary sacrifice and seek independent financial advice if you are unsure about the potential impact.</p> <p>Further information can be obtained from: <a href="http://www.nhsbsa.nhs.uk">www.nhsbsa.nhs.uk</a> <a href="http://www.gov.uk/NHS">www.gov.uk/NHS</a> Pension scheme for England and Wales 2015</p>	
<p><b>Please tick the box as applicable:</b></p> <p><input type="checkbox"/> I have taken independent advice regarding the impact of the salary sacrifice on my pension.</p> <p><input type="checkbox"/> I have chosen not to take independent advice regarding the impact of the salary sacrifice on my pension.</p> <p><input type="checkbox"/> I am not in the pension scheme</p> <p><input type="checkbox"/> Not applicable I am selling annual leave</p>	
<b>Please read and sign below</b>	
<p>I have read and understood the information above and in the salary sacrifice guidance which can be obtained from Appendix 2</p> <p>I understand that the Trust cannot provide financial advice, and that I should get independent financial advice if I am unsure about how salary sacrifice may affect me financially.</p> <p><b>I confirm that I have read and understood the 'Salary Sacrifice Guidance' document at Appendix 2 and authorise any changes to my salary as per choice and approval.</b></p>	
<b>Employee Signature</b>	
<b>Assignment Number</b>	
<b>Print Name</b>	
<b>Date</b>	
<b>Please forward this form to your Line Manager for completion of Section 3.</b>	

**To be returned by the 10 January**

<b>Section 3: To be completed by Line Manager</b>				
When completing this section please ensure you consider the criteria stipulated in <b>Section 6</b> of the Buying & Selling Annual Leave Scheme.				
1) Has the employee already carried over annual leave from the previous year?	Yes		No	
If yes, to the above question, please detail how many hours/days were carried over				
<hr/>				
2) Does the employees sickness absence rate exceed the Trusts trigger points with the LPT Management of Ill Health Policy and Procedure.	Yes		No	
If you have answered 'yes' to question 1 or 2, but <b>do still support</b> the employees application please provide brief details here regarding your decision:				
<hr/>				
<b>Please tick the appropriate option:</b>				
<b>Option a: I support this application (pending living wage checks being undertaken)</b> <input type="checkbox"/>				
<b>Option b: I do not support this application</b> <input type="checkbox"/>				
<b>Option c: I cannot support the employee's full request; however I can accommodate a proportion of this request. I would therefore support the application to buy/ sell* (*please delete as appropriate) a total of ..... hours</b>				
<b>Managers Signature</b>				
<b>Print name</b>				
<b>Date</b>				
<hr/>				
<b>Section 4: To be completed Head of Service/Director</b>				
<b>Signature:</b>				
<b>Print name</b>				
<b>Date</b>				
<b>Rationale for decision:</b>				
<b>Completed form to be sent to: Allocated Point of contact person for your area.</b>				

# Salary Sacrifice Guidance & Frequently Asked Questions

## Employee Information

This document is guidance relating to Salary Sacrifice schemes for the employees of Leicestershire Partnership NHS Trust. It sets out the implications of these schemes on your salary, pension, tax etc. It is important that you read this before you make a decision to participate in a salary sacrifice arrangement.

The total value of any/all salary sacrifice must not exceed 10% of your NET annual salary after taking into account any other deductions from salary including NI, Income Tax & Pensions.

## What is salary sacrifice?

Salary sacrifice schemes provide staff with an excellent opportunity to gain a benefit (benefit in kind) whilst making substantial savings by agreeing to 'sacrifice' (or give up) a portion of salary in exchange for a service or benefit.

When you join a salary sacrifice scheme you sign an agreement to vary your terms and conditions relating to pay. Savings for basic rate tax payers can be as high as 38% and for higher rate tax payers as much as 48%. Your savings are made because you pay less PAYE (income tax), National Insurance and Pension contributions.

A good example of this: An employee earning £20,000 per annum joins the Cycle 2 Work Scheme and orders a bike for £1,000. For the next 12 months, the employee agrees to sacrifice that £1,000 and therefore effectively earns £19,000 for the next twelve months and therefore pays less tax, NI and pension.

## What is a benefit in kind?

“Benefit in kind” are benefits that employees receive from their company which aren't included in their salary or wages. Not all benefits in kind are treated in the same way by the tax system. Some aren't taxed, but others are. It's a good idea to consider them as cash equivalents which contribute to your income. There's a wide range of benefits in kind – from company cars to Home Electronic schemes, some of which the Trust offers as part of its staff benefits package.

Some benefits don't incur any tax. However, there are complex rules around each type of benefit and a range of circumstances which HMRC will take into account before deciding if you have tax to pay or not. You may hear the words “Taxed at Source” or “P11D”, this is the way that the Trust reports your benefits in kind. The Trust takes the Tax payment at source; this method means you pay your BIK charge monthly from your salary. The payments usually start the month after receiving your taxable benefit and end the month after the benefit ceases. This method means you do not receive a P11D form from the Trust and your tax coding is not amended by HMRC.

The Benefits that do not have a tax charge are:

- Cycle2Work
- Childcare Vouchers
- Buying & Selling Annual Leave.

## Will participation in a salary sacrifice scheme affect my NHS pension?

Yes, dependent on which section of the scheme you are in Salary Sacrifice reduces the basic salary that your pension is based on. The Trust and its officers do not give pension advice. Each scheme will outline the impact on your pension so you can make an informed

decision. However you are strongly advised to consider the impact of the reduced salary and seek independent financial advice if you are unsure about the potential impact. Further information can be obtained from: [www.nhsbsa.nhs.uk](http://www.nhsbsa.nhs.uk) - and search NHS Pension Scheme & [www.gov.uk](http://www.gov.uk) – and search NHS Pension Scheme

### **Will it affect my State pension and other State benefits?**

Possibly, Your State pension and other benefits such as Statutory Sick Pay and Statutory Maternity Pay can be affected by the level of National Insurance contributions you make. This is unlikely to affect most staff, but would affect those whose annual pay after salary sacrifice falls below the lower earnings limit.

See HMRC guidance at:

[www.hmrc.gov.uk/specialist/salary\\_sacrifice.htm](http://www.hmrc.gov.uk/specialist/salary_sacrifice.htm)

### **National Minimum Wage**

A Salary Sacrifice scheme must not reduce your pay to below the National Living Wage. You will not be able to take part in the salary sacrifice scheme if your hourly rate falls below this limit after the salary sacrifice has been deducted. This will take into account any other Salary Sacrifice you have in place.

### **Will participation in a salary sacrifice scheme affect my tax credits?**

Possibly, Tax credits/Universal credit depends on a number of personal factors including the number of hours worked the number of children and whether eligible childcare costs are paid. We strongly suggest that you check this with your local Government benefits office before applying.

### **What happens if I change jobs or leave to go to another Trust?**

We will recover any outstanding monies from the employee's final salary.

### **Is there any impact on student loans?**

Student loan recovery is based on post-sacrifice amounts. Therefore, under salary sacrifice arrangements the amount of student loan repayments will go down.

### **Will salary sacrifice affect mortgage and credit applications?**

A reduction in salary might affect general financial matters such as mortgage applications. However, the majority of lenders take into account salary sacrifice arrangements when making decisions.

### **Do I have to be full time to be eligible for the schemes?**

No, the schemes are open to all employees. However, participation is subject to National living Wage limit. You must have completed a period of 26 weeks working for the Trust before you are eligible to participate in any of the schemes. Each scheme is administered separately and gives different opportunities to join. Each scheme has its own participation length which is advised to you in advance.

### **Bank worker/Fixed Term Contracts**

As the schemes require staff to sacrifice part of their salary in return for a benefit, if you are a "bank" worker your monthly salary cannot be guaranteed to cover a salary sacrifice therefore you will not be able to apply. Staff with fixed term contracts can only participate in the scheme if participation can be completed before the end of the fixed term.

### **Once in any of the schemes can I opt out?**

Participation in each scheme requires a change to your terms and conditions of service and therefore it is only possible to opt out on the scheme renewal dates or due to a life

changing event (for example that might lead to the need to change working hours). In these circumstances, the Trust may agree for you to opt of one or more of the schemes. Any outstanding monies owed will need to be paid.

Once in any of the schemes can I change the benefits I have chosen?

As above, if there is a life changing event the Trust will consider a request to change the benefits selected.

What is a life changing event?

This might include:

- A new baby
- Adoption
- Divorce/separation
- Death of a partner/child
- Changes in childcare arrangements.

This list is not exhaustive.

### **What happens if I leave voluntarily when I am part way through a salary sacrifice agreement?**

On leaving the Trust you will be liable for any and all outstanding salary sacrifice monies still owed, this will be deducted from your final salary payment. If more than your final salary is owed after your final salary deduction you will be invoiced for the remaining amount. If you have a longer notice period than one month, you can arrange for the money to spread over this period. This can be arranged by emailing xxx

### **Redundancy**

When you take out a salary sacrifice scheme, you are agreeing to vary your contractual terms in respect of basic pay. However, any contractual payments in relation to redundancy including payment in lieu of notice will be based on the higher salary rate (i.e. the rate before the salary sacrifice is applied).

### **TUPE**

If you have a salary sacrifice scheme and you are transferred to another organisation under the TUPE regulations, a discussion will be had with you over the scheme that you are part of to advise you of the next steps. Benefits programs are not a contractual right under TUPE and therefore, there is no guarantee that the new employer will take a scheme forward. Usually, the scheme is closed as if you were a leaver from the organisation and all outstanding money will be taken from your final salary.

### **Retire and Return**

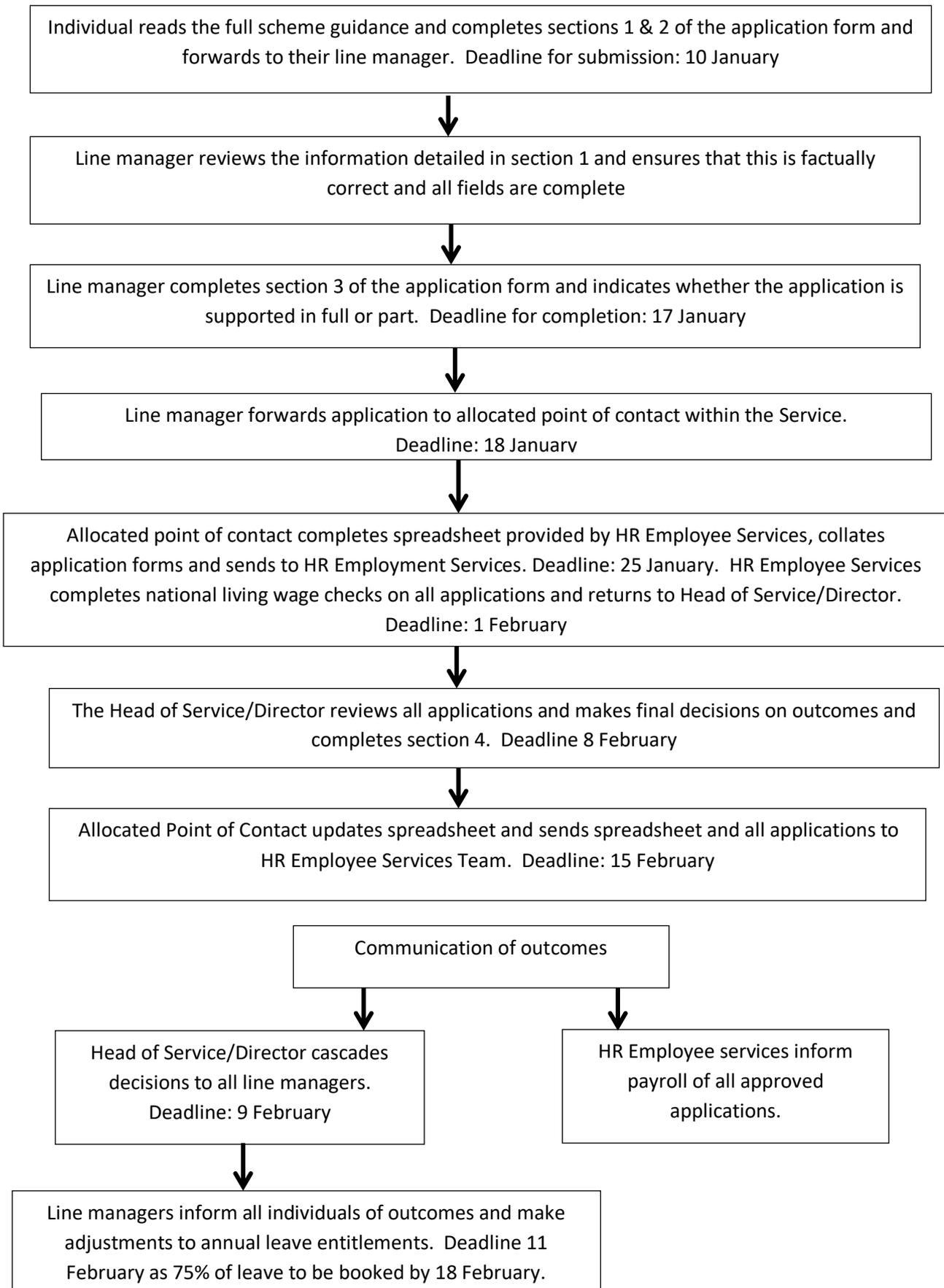
If you choose to retire and return whilst you have an existing salary sacrifice it will be the same process that would happen if you were to leave the Trust on a permanent basis. All monies owed would be taken from your final salary before you retire.

### **Death in Service Benefits**

These benefits will also be impacted if you die in pensionable employment during the scheme. The life assurance within the NHS Pension Scheme is paid by a lump sum equal to 2 years of Pensionable Pay. As your Pensionable Pay will decrease by the amount of the Salary Sacrifice, this may have an effect on your benefits.

## Appendix 6

### Buying and Selling Annual Leave Scheme Process



## Appendix 7

### DATA PRIVACY IMPACT ASSESSMENT SCREENING

<p><b>Data Privacy impact assessment (DPIAs) are a tool which can help organisations identify the most effective way to comply with their data protection obligations and meet Individual's expectations of privacy.</b></p> <p><b>The following screening questions will help the Trust determine if there are any privacy issues associated with the implementation of the Policy. Answering 'yes' to any of these questions is an indication that a DPIA may be a useful exercise. An explanation for the answers will assist with the determination as to whether a full DPIA is required which will require senior management support, at this stage the Head of Data Privacy must be involved.</b></p>		
<b>Name of Document:</b>	<b>Buying and Selling Leave Policy</b>	
<b>Completed by:</b>	<b>Julie Hamore</b>	
<b>Job title</b>	<b>Senior HR Advisor</b>	<b>Date 16 October 2020</b>
<b>Screening Questions</b>	<b>Yes / No</b>	<b>Explanatory Note</b>
1. Will the process described in the document involve the collection of new information about individuals? This is information in excess of what is required to carry out the process described within the document.	No	
2. Will the process described in the document compel individuals to provide information about them? This is information in excess of what is required to carry out the process described within the document.	No	
3. Will information about individuals be disclosed to organisations or people who have not previously had routine access to the information as part of the process described in this document?	No	
4. Are you using information about individuals for a purpose it is not currently used for, or in a way it is not currently used?	No	
5. Does the process outlined in this document involve the use of new technology which might be perceived as being privacy intrusive? For example, the use of biometrics.	No	
6. Will the process outlined in this document result in decisions being made or action taken against individuals in ways which can have a significant impact on them?	No	
7. As part of the process outlined in this document, is the information about individuals of a kind particularly likely to raise privacy concerns or expectations? For examples, health records, criminal records or other information that people would consider to be particularly private.	No	
8. Will the process require you to contact individuals in ways which they may find intrusive?	No	
<p><b>If the answer to any of these questions is 'Yes' please contact the Data Privacy Team via <a href="mailto:Lpt-dataprivacy@leicspart.secure.nhs.uk">Lpt-dataprivacy@leicspart.secure.nhs.uk</a></b></p> <p><b>In this case, ratification of a procedural document will not take place until review by the Head of Data Privacy.</b></p>		
<b>Data Privacy approval name:</b>	<b>Sam Kirkland, Head of Data Privacy</b>	
		
<b>Date of approval</b>	<b>20/10/2020</b>	

Acknowledgement: This is based on the work of Princess Alexandra Hospital NHS Trust