

Decision maker:	Chief Executive
Decision date:	6th September 2022
Title of report:	Introduction of leave trading
Report by:	Director of HR & OD

Classification

Open

Decision type

This is not an executive decision

Wards affected

(All Wards);

Purpose and summary

To approve the introduction of an annual leave trading scheme for Herefordshire Council employees. The scheme would be trialled for six months during the 2022 annual leave year and would initially allow employees to request to purchase up to 3 days' additional leave (pro-rata for part time employees) during the trial period, subject to their line manager's approval.

The proposed annual leave purchase scheme would promote employee wellbeing whilst also positively contributing to employee recruitment and retention which, given the evidenced link to organisational performance, should in turn lead to better outcomes for residents and communities.

Recommendation(s)

That:

- (a) the annual leave trading scheme for Herefordshire Council employees be approved, with the trial period launching 7th September 2022.**

Alternative options

1. This section sets out the alternative option to the recommended option, together with its advantages and disadvantages, and the reasons rejecting the alternative option.
2. The council maintains its current position and does **not** introduce an annual leave trading scheme:

Advantages	Disadvantages	Reasons for rejection
<ul style="list-style-type: none"> • This would be no different to the council's current position and so there are no advantages as such 	<ul style="list-style-type: none"> • This may limit the council's ability to remain competitive within the current job market, particularly as leave trading schemes are on offer from neighbouring councils • This would lead to a potential 'missed opportunity' in respect of an enhanced recruitment and retention, and employee wellbeing offer • This would lead to a potential 'missed opportunity' in respect of income generation from leave purchase requests 	<ul style="list-style-type: none"> • The disadvantages of this option outweigh the advantages • The main reason for rejection being the potential for a 'missed opportunity'

Key considerations

3. In July 2018, Employment Panel received a report which recommended a range of measures to help the council address difficulties in recruiting and retaining staff in hard-to-fill roles. Employment Panel were supportive of those measures, which included the potential award of additional annual leave.
4. Since then, as part of the council's recruitment and retention offer, the Cabinet Member for Finance and Corporate Services approved the introduction of an employee benefits scheme in June 2019. This was launched in July 2019 – branded as The Orchard and is open to all centrally-employed council employees.
5. The introduction of an annual leave trading scheme for Herefordshire Council employees would further support the council's recruitment and retention offer by enhancing the council's employer brand and position within the current job market. It would also help to promote a positive approach to employee wellbeing by placing value on the importance of employee choice, maintaining a good work-life balance and taking time away from the workplace.

6. It is proposed that an annual leave trading scheme is introduced for Herefordshire Council employees. A leave trading scheme can provide employees with the options to both purchase and sell annual leave. It is proposed that the scheme commences on a trial basis, limited to the sole option of leave purchase, in order that the impact can be tested on a relatively small scale.
7. It was originally proposed that the trial would commence during the 2020 annual leave year, however, due to the Covid-19 pandemic it is now proposed that the trial commences during the 2022 annual leave year. The trial would initially allow employees to request to purchase up to 3 days' additional leave (pro-rata for part time employees), subject to their line manager's approval.
8. If the trial is successful, the council may decide to do one or all of the following at any given time:
 - extend the scheme into future annual leave years;
 - increase the number of days' leave that is available to purchase; and
 - introduce the option for employees to sell annual leave.
9. The annual leave trading scheme would not apply to the following groups of staff:
 - those based in schools;
 - those employed on term-time working patterns;
 - those on secondment to the council from another employer, who are not on council terms and conditions; and
 - those working on a casual, relief or agency basis.
10. Through purchasing additional annual leave during the trial period, employees would give up a proportion of their salary in exchange for extra time off work. Whilst it is difficult to predict exactly how many employees would request additional leave via the scheme, we do know that 51% (174) of employees responding to an employee benefits survey conducted by the council during summer 2015 stated that they would be interested in purchasing additional annual leave.
11. Based upon the council's average actual employee salary of £26,522.99 (as at 29 October 2019 and based upon the eligible employee group), it is estimated that introducing the annual leave purchase trial could generate the following income for the council:

Percentage of eligible employees taking up the scheme	Income per day purchased
5%	£ 4,559.77
7.5%	£ 6,839.66
10%	£ 9,119.55
12.5%	£ 11,399.44

12. It is important to note that the net income will vary from case to case as it is dependent upon whether it is necessary for the service to arrange cover for an employee's additional leave period, for example. The information contained at paragraph 10 is for illustrative purposes only.

13. Any income generated from employee annual leave purchase requests would be returned to departmental budgets. It would be for departments to reallocate this money as they deem appropriate during the given financial year.
14. As part of the research carried out into the options for an annual leave trading scheme, it is clear that many organisations, both private and public sector, already offer employees the option to purchase and/or sell annual leave. This includes Hoople Ltd.
15. Hoople Ltd have operated an annual leave trading scheme since 2017. The scheme enables employees to purchase or sell up to 3 days per leave year. The below table summarises the utilisation of Hoople Ltd's leave trading scheme:

Leave Year	Total number of days leave		Average number of days leave per employee	
	Purchased	Sold	Purchased	Sold
2017/2018	57.47	20.78	2.61	2.60
2018/2019	32.62	42	2.51	3
2019/2020	61.05	39	2.65	3

16. A number of councils across England and Wales already offer an annual leave trading scheme to their employees. For the purposes of this report, the below table summarises the offer currently available in neighbouring councils:

Council name	Maximum purchase entitlement	Maximum sale entitlement
Gloucestershire County Council	10 days	N/A
Monmouthshire County Council	10 days	N/A
Powys County Council	10 days	5 days
Shropshire Council	5 days	N/A
Worcestershire County Council	15 days	N/A

17. Herefordshire Council's annual leave trading scheme would be a non-contractual employee benefit and the council could decide to cease or remove such a scheme at any time.
18. The effectiveness of the proposed annual leave trading scheme would be monitored in terms of usage rates, financial impact, operational impact and the perceived value of the scheme would be tested through stakeholder engagement. There would be a first, formal review of the trial annual leave purchase scheme during 2022. Following this review, a decision would be made regarding the potential continuation and/or enhancement of the scheme during the 2023 annual leave year.

Community impact

19. The recommendations outlined in this report are a key enabler to achieving the council's ambition for Herefordshire as set out in its Corporate Plan.

20. The proposed annual leave purchase scheme would promote employee wellbeing whilst also positively contributing to employee recruitment and retention which, given the evidenced link to organisational performance, should in turn lead to better outcomes for residents and communities.
21. Given the council's focus on residents and communities, employee requests to purchase and/or sell additional annual leave would be agreed at line managers' discretion taking account of any operational impact.

Equality duty

22. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to -

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
23. The public sector equality duty (specific duty) requires us to consider how we can positively contribute to the advancement of equality and good relations, and demonstrate that we are paying 'due regard' in our decision making in the design of policies and in the delivery of services. The council's procedure would set out that all annual leave purchase and/or sale requests should be given equal consideration by line managers, with the criteria for approval being based solely upon operational or technical considerations related to the employee's job or service needs.

Resource implications

24. This section focuses on the impact of the decision on finance, ICT and human resources, as there would be no impact in respect of property.
25. The trial annual leave purchase scheme would have a positive impact on finance per approved leave purchase request, as set out in paragraph 10 of this report. This is because the employee would effectively give up some of their salary in return for the additional annual leave. The income from those employee salary deductions would be returned to departmental budgets for departments to reallocate as they deem appropriate.
26. Should the council decide at a later date to also introduce the option for employees to sell their annual leave, employees would effectively be reimbursed in return for them giving up some of their contractual annual leave entitlement. The option to sell leave would therefore come at an additional cost to the council. Before deciding to introduce this option, full and careful consideration would be given as to how the potential financial impact would be managed. As an example, some other organisations manage this by allowing one leave sale request per leave purchase request which can lead to the scheme being cost neutral.

27. There would be no additional costs associated with implementing the annual leave trading scheme or with its ongoing management on the basis that these would be managed as part of existing ICT (Business World) and HR work programmes.
28. In terms of the administration of the scheme, the process for employees requesting to purchase (or eventually sell) annual leave and for line managers to approve such requests would mirror other existing Business World processes. Employees and line managers are already familiar with those processes and so would be able to complete them as part of their normal day-to-day work. An alternative process would be designed to accommodate non-Business World users as part of the implementation period.

Legal implications

29. The proposed annual leave trading scheme for employees demonstrate the council's commitment to helping employees to achieve a balance between work and personal life and is in line with s.80F of the Employment Rights Act 1996 confers on employees the right to request flexible working arrangements.
30. Prior to implementation of scheme, the council should develop a clear procedure setting out for issues such as the conditions for employees to purchase annual leave, the limit on the number of days that an employee can trade, whether untaken additional leave purchased can be carried over into the following leave year, rights to refuse applications to trade leave, whether there will be any rights of appeal from such a decision etc.
31. Although clause 15 makes it clear that the scheme itself would be a non-contractual benefit, the arrangement to buy additional holidays may operate so as to constitute a contractual agreement between the employee and employer (the council). Once the agreement is entered into it will be valid for a set duration and withdrawal from the agreement will be limited to pre-determined period and agreed circumstances. Such an agreement would also vary an employee's existing terms and conditions of employment for the duration of the agreement. It does so by reducing the employee's gross pay by the value of the annual leave days purchased and in turn increasing their annual leave entitlement.
32. Where an employee requests to purchase additional annual leave, this will result in a reduction to their monthly salary for their whole leave year thus pension benefits and National Insurance contributions may be affected.
33. For pension purposes, it may be that any additional annual leave purchased may result in pension contributions by both the employee and council not automatically being paid. It may therefore be helpful to consult with the Pension Team on whether the employee would have the option to pay additional pension contributions to cover the amount of pension lost during the period of the authorised unpaid leave of absence.

Risk management

34. The below table sets out the risks to the council both if the recommendations of this report are agreed and if the recommendations of this report are declined. It provides an overview as to how these risks would be managed.

Risk / opportunity	Mitigation
Recommendations of this report are declined and the annual leave trading scheme is not implemented	The council seeks to enhance its employee wellbeing and recruitment / retention offer in other ways.
The annual leave trading scheme is found not to work in the interest of the council	There would be an initial six-month trial leave purchase scheme during 2021 and the success, or otherwise, would be subject to review that year. This report makes it clear that there is no guarantee the scheme would continue in future years – this would be subject to the trial's success.
The granting of leave purchase requests are found to have an adverse impact on service delivery on the whole	<p>The annual leave purchase procedure and supporting FAQs would be explicit that requests to purchase additional leave are subject to line managers' discretion taking account of operational or technical considerations.</p> <p>Introducing the option to sell annual leave in the future may also help to mitigate this risk as this could increase employee cover.</p>
The granting of leave sale requests are found to have an adverse financial impact on the whole	<p>The annual leave sale procedure and supporting FAQs would be explicit that requests to sell leave are subject to line managers' discretion taking account of financial considerations.</p> <p>Prior to introducing the option to sell leave, full and careful consideration would be given as to how the potential financial impact would be managed. As an example, some other organisations manage this by allowing one leave sale request per leave purchase request which can lead to the scheme being cost neutral.</p>
The granting of leave purchase requests are found to result in increased agency usage on the whole	<p>The annual leave purchase procedure and supporting FAQs would be explicit that requests to purchase additional leave are subject to line managers' discretion taking account of operational or technical considerations.</p> <p>Introducing the option to sell annual leave in the future may also help to mitigate this risk as this could increase employee cover.</p>

<p>Requests to purchase additional leave by front-line employees are disproportionately declined</p>	<p>The annual leave purchase procedure would encourage line managers to take a flexible approach to employee requests, where operational or technical considerations allow. For example, an employee's request to purchase 3 days' leave cannot be granted but the line manager makes a counter-offer of 1.5 days.</p> <p>Where this is still not possible, the procedure and FAQs would be clear that requests can be refused.</p> <p>Introducing the option to sell annual leave in the future may also help to mitigate this risk as this could increase staff cover.</p>
<p>Employees seek to carry untaken additional purchased annual leave forward to the following leave year, presenting an operational issue for service areas</p>	<p>The annual leave purchase procedure and supporting FAQs would be explicit that purchased annual leave must be taken within the current leave year and this may not be carried forward to the following year. Employees would lose any purchased leave not taken by 31 December 2021.</p>
<p>Employees who have purchased additional annual leave in any given team / service all then wish to take the leave on the same dates e.g. over Christmas</p>	<p>The annual leave purchase procedure and supporting FAQs would be explicit that line managers have the discretion to ask for confirmation of the leave dates the employee wishes to take, during the employee request window. This gives line managers the assurance that they would be able to meet operational requirements before they approve an employee's purchase request.</p> <p>Otherwise, employees would request their annual leave dates via Business World as per normal process and line managers would make a decision regarding approval of those dates at that point in time.</p>

35. Working on the assumption that the recommendations outlined in this report are approved, the relevant risks would be managed at service level.

Consultees

36. The council's recognised trade unions were informed of the proposal to introduce an annual leave trading scheme for employees at the Joint Partnership Forum meeting held on 11 September 2019, without prejudice to the decision in respect of this report. The

trade unions understood the potential positive impact of the scheme. The trade unions will be kept informed of progress via regular scheduled Joint Partnership Forum meetings.

37. During September and October 2019, informal consultation meetings were held with the council's Management Board members to seek their individual views about the proposed introduction of an annual leave trading scheme.
38. Feedback from these individual consultation meetings was collated and presented at the Management Board meeting which took place on 12 November 2019. The outcome of that meeting was that Management Board were supportive of the proposal to trial an annual leave purchase scheme for council employees, on the proviso that employees are able to request to purchase a maximum of 3 days' additional annual leave (pro-rata for part time employees).
39. The council's Employment Panel was consulted on 13 January 2020 and was supportive of introducing an annual leave trading scheme, subject to the following conditions:
 - (a) that this report make it clear that income generation is not a driver for the initiative; and
 - (b) that there is a balance in the system to ensure pressure is not placed on the colleagues of employees taking additional annual leave.
40. There is no requirement to consult formally or more widely in respect of the recommendations outlined in this report as it does not represent a change to employee terms and conditions of employment.
41. It is recognised that there has been a delay in consultation of the proposal and a date of implementation. This has been due to the impact of Covid-19 and working practices, along with the build and testing of the system to allow staff to purchase leave.

Appendices

None.

Background papers

None identified.