

SHARED PARENTAL LEAVE POLICY

Version 2.0

Version number :	2
Consultation Groups	JSC and subgroup
Approved by (Sponsor Group)	JSC Sub group
Ratified by:	JSC
Date ratified:	December 2018
Name of originator/author:	HR Advisor – Health & Wellbeing Revised HR Business Partner & Health & Wellbeing Officer
Executive Director lead :	Dir of HR
Implementation Date :	January 2019
Last Review Date	December 2018
Next Review date:	January 2022
Services	Applicable
Trustwide	X
Mental Health and LD	
Community Health Services	

VERSION CONTROL SUMMARY

Version	Date	Comments/Changes
1.0	15 th December 2015	Policy compiled by Diane Aston, HR Advisor – Health & Wellbeing in line with the new Statutory Regulations to commence on for babies due on or after 5/4/15, which replaces Additional Paternity Leave.
2.0	February 2018	Reviewed as part of Trust compliance

Introduction

Policy Statement

East London NHS Foundation Trust (herein referred to as 'the Trust') complies with the Shared Parental Leave Regulations 2014, which provides a statutory right for an employee to take shared parental leave (ShPL) in connection with the birth or a child, or placement of an adopted child born on or after 5th April 2015.

The policy outlines the process to be undertaken if staff choose to take Shared Parental Leave, and explains the steps staff need to take at each stage of the shared parental leave.

This policy is written in accordance with the Shared Parental Leave Regulations 2014, The Shared Parental Leave Pay (General) Regulations 2014, Maternity & Adoption Leave (Curtailed of Statutory Rights) Regulations 2014, Employment Rights Act 1996, Child and Families Act 2014 and the Equality Act 2010.

This policy is applicable to staff who are new or expectant mothers/fathers/partners whose baby is due on or after 5th April 2015. It is also applicable to adoptive parents who are due to adopt a child on or after 5th April 2015.

Scope of Policy

This Policy applies to all staff irrespective of employment terms & conditions provided qualifying conditions such as length of service are satisfied.

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1.0 What is Shared Parental Leave?

Shared Parental Leave enables eligible parents to choose how to share the care of their child during the first year of birth or adoption. Its purpose is to give parents more flexibility in considering how to best care for, and bond with, their child. All eligible employees have a statutory right to take Shared Parental Leave. There may also be an entitlement to some Shared Parental Pay. This policy sets out the statutory rights and responsibilities of employees who wish to take statutory Shared Parental Leave (SPL) and statutory Shared Parental Pay (ShPP).

The Trust recognises that, from time to time, employees may have questions or concerns relating to their shared parental rights. It is the Trust policy to encourage open discussion with employees to ensure questions and problems can be resolved as quickly as possible. Employees should clarify the relevant procedures with their local HR Officer.

2.0 Who is Eligible for Shared Parental Leave?

Shared Parental Leave (SPL) can only be used by two people:

- The mother/adopter **and**
- One of the following
 - The father of the child (in the case of a birth) or
 - The spouse, civil partner or partner of the child's mother/adopter

Both parents must share the main responsibility for the care of the child at the time of the birth/placement for adoption.

Additionally an employee seeking to take SPL must satisfy each of the following criteria:

- The mother/adopter of the child must be/have been entitled to statutory maternity/adoption leave or if not entitled to statutory maternity/adoption leave they must be/have been entitled to statutory maternity/adoption pay or maternity allowance and must have ended or given notice to reduce any maternity/adoption entitlements.
- The employee must still be working for the Trust at the start of each period of SPL.
- The employee must pass the "Continuity test" requiring them to have a minimum of 26 weeks service at the end of the 15th week before the child's expected due date/matching date.
- The employee's partner must also meet the "employment and earnings test" requiring them in the 66 weeks leading up to the child's expected due date/matching date to have worked for at least 26 weeks (they don't need to be in a row) and have earned at least £390 in total (this may be subject to change annually) in 13 of the 66 weeks (add up the highest paying weeks, they don't need to be in a row) However, the employee's partner can also be self-employed and not work for the Trust at the time SPL is taken.
- The employee must correctly notify the Trust of their entitlement and provide evidence as required.

3.0 Shared Parental Leave Entitlement

Eligible employees may be entitled to take up to 50 weeks SPL during the child's first year in their family. The number of weeks available is calculated using the mother's/adopter's entitlement to maternity/adoption leave, which allows them to take up to 52 weeks' leave. If they reduce their maternity/adoption leave entitlement then they and/or their partner may opt-in to the SPL system and take any remaining weeks as SPL.

A mother/adopter may reduce their entitlement to maternity/adoption leave by returning to work before the full entitlement of 52 weeks has been taken, or they may give notice to curtail their leave at a specified future date.

If the mother/adopter is not entitled to maternity/adoption leave but is entitled to Statutory Maternity Pay (SMP), Statutory Adoption Pay (SAP) or Maternity Allowance (MA), they must reduce their entitlement to less than the 39 weeks. If they do this, their partner may be entitled to up to 50 weeks of

SPL. This is calculated by deducting from 52 the number of weeks of SMP, SAP or MA taken by the mother/adopter.

SPL can commence as follows:

- The mother can take SPL after she has taken the legally required two weeks of maternity leave immediately following the birth of the child
- The adopter can take SPL after taking at least two weeks of adoption leave
- The father/partner/spouse can take SPL immediately following the birth/placement of the child, but may first choose to exhaust any paternity leave entitlements (as the father/partner cannot take paternity leave or pay once they have taken any SPL or ShPP).

Where a mother/adopter gives notice to curtail their maternity/adoption entitlement then the mother/adopter's partner can take leave while the mother/adopter is still using their maternity/adoption entitlements.

SPL will generally commence on the employee's chosen start date specified in their leave booking notice, or in any subsequent variation notice (see "Booking Shared Parental Leave" and "Variations to arranged Shared Parental Leave" below).

If the employee is eligible to receive it, Shared Parental Pay (ShPP) may be paid for some, or all, of the SPL period (see "Shared Parental Pay" below).

SPL must end no later than one year after the birth/placement of the child. Any SPL not taken by the first birthday or first anniversary of placement for adoption is lost.

4.0 Notifying the Trust of an Entitlement to Shared Parental Leave

An employee entitled and intending to take SPL must give their line manager notification of their entitlement and intention to take to SPL, at least eight weeks before they can take any period of SPL.

Part of the eligibility criteria requires the employee to provide the Trust with correct notification.

Notification must be in writing and requires each of the following:

- The name of the employee;
- The name of the other parent;
- The start and end dates of any maternity/adoption leave or pay, or maternity allowance, taken in respect of the child and the total amount of SPL available;
- The date on which the child is expected to be born and the actual date of birth or, in the case of an adopted child, the date on which the employee was notified of having been matched with the child and the date of placement for adoption;
- The amount of SPL the employee and their partner each intend to take
- A non-binding indication of when the employee expects to take the leave.

The employee must provide the organisation with a signed declaration stating:

- That they meet, or will meet, the eligibility conditions and are entitled to take SPL;
- That the information they have given is accurate;
- If they are not the mother/adopter they must confirm that they are either the father of the child or the spouse, civil partner or partner of the mother/adopter;
- That should they cease to be eligible they will immediately inform the Trust.

The employee must provide the Trust with a signed declaration from their partner confirming:

- Their name, address and national insurance number (or a declaration that they do not have a national insurance number);
- That they are the mother/adopter of the child or they are the father of the child or are the spouse, civil partner or partner of the mother/adopter;

- That they satisfy the 'employment and earnings test' (see section 2.0 above), and had at the date of the child's birth or placement for adoption the main responsibility for the child, along with the employee;
- That they consent to the amount of SPL that the employee intends to take;
- That they consent to the organisation processing the information contained in the declaration form; and
- (In the case whether the partner is the mother/adopter), that they will immediately inform their partner should they cease to satisfy the eligibility conditions.

5.0 Requesting Further Evidence of Eligibility

The organisation may, within 14 days of the SPL entitlement notification being given, request:

- The name and business address of the partner's employer (where the employee's partner is no longer employed or is self-employed their contact details must be given instead)
- In the case of biological parents, a copy of the child's birth certificate (or, where one has not been issued, a declaration as to the time and place of the birth).
- In the case of an adopted child, documentary evidence of the name and address of the adoption agency, the date on which they were notified of having been matched with the child and the date on which the agency expects to place the child for adoption

In order to be entitled to SPL, the employee must produce this information within 14 days of the employer's request.

6.0 Fraudulent Claims

The Trust can, where there is a suspicion that fraudulent information may have been provided or where the Trust has been informed by the HMRC that a fraudulent claim was made, investigate the matter further in accordance with the Trust's Counter Fraud and Bribery Policy. In such cases a referral may be made to the Trust's Local Counter Fraud Specialist. Fraud constitutes gross misconduct and may lead to disciplinary action.

7.0 Discussions Regarding Shared Parental Leave

An employee considering/taking SPL is encouraged to contact their local HR Officer to arrange an informal discussion as early as possible regarding their potential entitlement, to talk about their plans and to enable the Trust to support the individual.

The HROfficer may upon receiving a notification of entitlement to take SPL seek to arrange an informal discussion with the employee to talk about their intentions and how they currently expect to use their SPL entitlement.

Upon receiving a leave booking notice the HR Officer will usually arrange a meeting with the employee and their manager to discuss it. Where a notice is for a single period of continuous leave, or where a request for discontinuous leave can without further discussion be approved in the terms stated in the employee's notice booking leave, a meeting may not be necessary.

Where a meeting is arranged it should take place in private and be arranged in advance. If the initial date is problematic then another date will be arranged if possible. If an alternative date cannot be arranged then the meeting may be held over the telephone.

At the meeting the employee may, if they wish, be accompanied by a workplace colleague or a trade union representative.

The purpose of the meeting is to discuss in detail the leave proposed and what will happen while the employee is away from work. Where it is a request for discontinuous leave the discussion may also focus on how the leave proposal could be agreed, whether a modified arrangement would be

agreeable to the employee and the organisation, and what the outcome may be if no agreement is reached.

8.0 Booking Shared Parental Leave

In addition to notifying the employer of entitlement to SPL/ShPP, an employee must also give notice to take the leave. In many cases, notice to take leave will be given at the same time as the notice of entitlement to SPL.

The employee has the right to submit three notifications specifying leave periods they are intending to take. Each notification may contain either (a) a single period of weeks of leave; or (b) two or more weeks of discontinuous leave, where the employee intends to return to work between periods of leave.

SPL can only be taken in complete weeks but may begin on any day of the week. For example if a week of SPL began on a Tuesday it would finish on a Monday. Where an employee returns to work between periods of SPL, the next period of SPL can start on any day of the week.

The employee must book SPL by giving the correct notification at least eight weeks before the date on which they wish to start the leave and (if applicable) receive ShPP.

9.0 Continuous leave notifications

A notification can be for a period of **continuous leave**, which means a notification of a number of weeks taken in a single unbroken period of leave (for example, six weeks in a row).

An employee has the right to take a continuous block of leave notified in a single notification, so long as it does not exceed the total number of weeks of SPL available to them (specified in the notice of entitlement) and the employer has been given at least eight weeks' notice.

An employee may submit up to three separate notifications for continuous periods of leave.

10.0 Discontinuous leave notifications

A single notification may also contain a request for two or more periods of **discontinuous leave**, which means asking for a set number of weeks of leave over a period of time, with breaks between the leave where the employee returns to work (for example, an arrangement where an employee will take six weeks of SPL and work every other week for a period of three months).

Where there is concern over accommodating the notification, the organisation or the employee may seek to arrange a meeting to discuss the notification with a view to agreeing an arrangement that meets both the needs of the employee and the Trust (see section 7.0 above).

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

11.0 Responding to a Shared parental Leave Notification

Once the HR Officer receives the leave booking notice, it will be dealt with as soon as possible, but a response will be provided no later than the 14th day after the leave request was made.

All notices for continuous leave will be confirmed in writing.

All requests for discontinuous leave will be carefully considered, weighing up the potential benefits to the employee and to the Trust against any adverse impact to the service needs.

Each request for discontinuous leave will be considered on a case-by-case basis. Agreeing to one request will not set a precedent or create the right for another employee to be granted a similar pattern of SPL.

The employee will be informed in writing of the decision as soon as is reasonably practicable, but no later than the 14th day after the leave notification was made.

If a discontinuous leave pattern is refused then the employee may withdraw the request without detriment on or before the 15th day after the notification was given; or may take the total number of weeks in the notice in a single continuous block. If the employee chooses to take the leave in a single continuous block, the employee has until the 19th day from the date the original notification was given to choose when they want the leave period to begin. The leave cannot start sooner than eight weeks from the date the original notification was submitted. If the employee does not choose a start date then the leave will begin on the first leave date requested in the original notification.

12.0 Variations to Arranged Shared Parental Leave

The employee is permitted to vary or cancel an agreed and booked period of SPL, provided that they advise the Trust in writing at least eight weeks before the date of any variation. Any new start date cannot be sooner than eight weeks from the date of the variation request.

Any variation or cancellation notification made by the employee, including notice to return to work early, will usually count as a new notification reducing the employee's right to book/vary leave by one. However, a change as a result of a child being born early, or as a result of the Trust requesting it be changed, and the employee being agreeable to the change, will not count as further notification. Any variation will be confirmed in writing by the organisation.

13.0 Statutory Shared parental Pay (ShPP)

Eligible employees may be entitled to take up to 37 weeks ShPP while taking SPL. The amount of weeks available will depend on the amount by which the mother/adoption reduces their maternity/adoption pay period or maternity allowance period.

ShPP may be payable during some or all of SPL, depending on the length and timing of the leave.

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

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

Where an employee is entitled to receive ShPP they must, at least eight weeks before receiving any ShPP, give their line manager written notice advising of their entitlement to ShPP. To avoid duplication, if possible, this should be included as part of the notice of entitlement to take SPL.

In addition to what must be included in the notice of entitlement to take SPL, any notice that advises of an entitlement for ShPP must include:

- The start and end dates of any maternity/adoption pay or maternity allowance;
- The total amount of ShPP available, the amount of ShPP the employee and their partner each intend to claim, and a non-binding indication of when the employee expects to claim ShPP;

- A signed declaration from the employee confirming that the information they have given is correct, that they meet, or will meet, the criteria for ShPP and that they will immediately inform the organisation should they cease to be eligible.

It must be accompanied by a signed declaration from the employee's partner confirming:

- Their agreement to the employee claiming ShPP and for the Trust to process any ShPP payments to the employee;
- (In the case whether the partner is the mother/ adopter) that they have reduced their maternity/adoption pay or maternity allowance;
- (In the case whether the partner is the mother/ adopter) that they will immediately inform their partner should they cease to satisfy the eligibility conditions.

Any ShPP due will be paid at a rate set by the Government for the relevant tax year .

14.0 Terms and Conditions during Shared Parental Leave

During the period of SPL, the employee's contract of employment continues in force and they are entitled to receive all their contractual benefits, except for salary. In particular, any benefits in kind (such as use of a lease car, laptop, mobile phone etc) will continue and contractual annual leave entitlement will continue to accrue.

Pension contributions will continue to be made during any period when the employee is receiving ShPP but not during any period of unpaid SPL. Employee contributions will be based on actual pay, while the organisation's contributions will be based on the salary that the employee would have received had they not been taking SPL.

15.0 Annual Leave

SPL is granted in addition to an employee's normal annual holiday entitlement. Employees are reminded that holiday should wherever possible be taken in the year that it is earned. Where an SPL period overlaps two leave years the employee should consider how their annual leave entitlement can be used to ensure that it is not untaken at the end of the employee's holiday year.

15.0 Contact During Shared Parental Leave

Before an employee's SPL begins, the Manager will discuss the arrangements for them to keep in touch during their leave. The organisation reserves the right in any event to maintain reasonable contact with the employee from time to time during their SPL. This may be to discuss the employee's plans to return to work, to ensure the individual is aware of any possible promotion opportunities, to discuss any special arrangements to be made or training to be given to ease their return to work or simply to update them on developments at work during their absence.

14.0 Shared Parental Leave in Touch Days

An employee can agree to work for the Trust (or attend training) for up to 20 days between them during SPL without bringing their period of SPL to an end or impacting on their right to claim ShPP for that week. These are known as "Shared Parental Leave In Touch" or "SPLIT" days. Any work carried out on a day or part of a day shall constitute a day's work for these purposes.

The Trust has no right to require the employee to carry out any work, and is under no obligation to offer the employee any work, during the employee's SPL. Any work undertaken is a matter for agreement between the manager and the employee. An employee taking a SPLIT day will receive full pay for any day worked. If a SPLIT day occurs during a week when the employee is receiving ShPP, this will be effectively 'topped up' so that the individual receives full pay for the day in question. Any SPLIT days worked do not extend the period of SPL.

An employee, with the agreement of the Trust, may use SPLIT days to work part of a week during SPL. The organisation and the employee may use SPLIT days to effect a gradual return to work by the employee towards the end of a long period of SPL or to trial a possible flexible working pattern.

15.0 Returning to Work after Shared parental Leave

The employee will have been formally advised in writing by the Trust of the end date of any period of SPL. The employee is expected to return on the next working day after this date, unless they notify the organisation otherwise. If they are unable to attend work due to sickness or injury, the Trusts normal arrangements for sickness absence will apply. In any other case, late return without prior authorisation will be treated as unauthorised absence.

If the employee wishes to return to work earlier than the expected return date, they may provide a written notice to vary the leave and must give the organisation at least 8 weeks notice of their date of early return. This will count as one of the employee's notifications. If they have already used their three notifications to book and/or vary leave then the Trust does not have to accept the notice to return early but may do if it is considered to be reasonably practicable to do so.

On returning to work after SPL, if the employee's aggregate total statutory maternity/paternity/adoption leave and SPL amounts to 26 weeks or less, he or she will be entitled to return to the same job. The same job is the one they occupied immediately before commencing maternity/paternity/adoption leave and the most recent period of SPL, on the same terms and conditions of employment as if they had not been absent.

If their maternity/paternity/adoption leave and SPL amounts to 26 weeks or more in aggregate, the employee is entitled to return to the same job they held before commencing the last period of leave or, if this is not reasonably practicable, to another job which is both suitable and appropriate and on terms and conditions no less favourable.

If the employee also takes a period of unpaid parental leave of 4 weeks or less this will have no effect on the employee's right to return and the employee will still be entitled to return to the same job as they occupied before taking the last period of leave if the aggregate weeks of maternity/paternity/adoption and SPL do not exceed 26 weeks.

If a parent takes a period of 5 weeks of unpaid parental leave, even if the total aggregate weeks of maternity/paternity/adoption and SPL do not exceed 26 weeks, the employee will be entitled to return to the same job they held before commencing the last period of leave or, if this is not reasonably practicable, to another job which is suitable and appropriate and on terms and conditions no less favourable.

16.0 Special Circumstances and Further Information

In certain situations an employee's rights and requirements regarding SPL and ShPP may change. In these circumstances the Trust will abide by any statutory obligations and an employee should refer to the documents listed below and/or clarify any issues or queries with their local HR Officer

- Law relating to this document:
- The Shared Parental Leave Regulations 2014
- The Shared Parental Pay (General) Regulations 2014
- The Maternity and Adoption Leave (Curtailed of Statutory Rights to Leave) Regulations 2014
- Employment Rights Act 1996
- Child and Families Act 2014
- Equality Act 2010

17.0 Work During Shared Parental Leave

With the exception of shared parental leave in touch days within the employees substantive post, work on the Trust Bank or working anywhere outside the Trust during the employee's contracted hours is not permitted during paid or unpaid Shared Parental Leave unless written approval has been obtained from the employee's manager and HR. If an employee undertakes work during their contracted hours without written approval this may constitute gross misconduct and may lead to disciplinary action and referral to the Trust's Local Counter Fraud Specialist.

Application for Shared Parental Leave

Please complete the form in BLOCK CAPITALS if handwritten.

Title	
First Name	
Surname	
Job Title	
Department	
Home Address	Postcode
Tel Number (Work)	
Tel Number (Home)	

Please inform your Head of Department/Line Manager and the HR Workforce Team if your home address or contact details change during your Shared Parental Leave.

I wish to inform you that I intend to take Shared Parental Leave as follows:

Child's date of birth or date of placement for adoption _____

Expected date SPL leave period to commence* _____

Expected return to work date _____

Dates of paid annual leave to be taken before and/or after SPL leave (in agreement with your Line Manager)

Before SPL leave From _____ To _____

It is your responsibility to ensure that all accrued annual leave is taken prior to commencing, if this is not possible you will be required to take it directly at the end of the SPL.

After SPL leave From _____ To _____

If, during your SPL leave, you change your mind about when you intend to return to work, you must give us **at least 8 weeks' notice** of your new intended date of return.

Please confirm the following:

- I am the baby's biological father/ married to the mother/ living with the mother in an enduring family relationship, but am not an immediate relative (please delete as appropriate)
- I have responsibility for the child's upbringing

- The purpose of the period of my SPL leave will be to care for the child whose birth/adoption certificate is provided with this form.
- I confirm that my partner will be returning to work without using his/her full maternity/adoption leave period and has completed the consent form, which gives consent for his/her details to be processed.
- I state my intention to retain my right to return to work following my SPL leave.
- If I wish to return to work earlier than my confirmed return date, I agree to inform Health & Wellbeing Advisor and my manager at least 8 weeks before the earlier return date. If I wish to return after my confirmed return date I will give at least 8 weeks' notice in writing, prior to my confirmed date.
- I will discuss the option of a maximum of 20 'Touch Days' with my Line Manager (these days are between both parties and not to be taken by one parent only).

If you require any information regarding your pension contributions during your SPL, please contact the Pensions Office directly on 020 8591 4700 .

DECLARATION

I have read and understood the Trust's Shared Parental Leave Policy, and agree to the following:

- a) I will respond within the required timescales to all Trust correspondence regarding my shared parental leave or I may, subject to my contract of employment, forfeit my right to return to work until relevant notice has been given.
- b) I enclose/have already provided my child's birth certificate, or confirmation of placement for adoption from my local authority (please delete as appropriate)
- c) I confirm that all details provided in this form to receive SPL or ShPP, are correct.
- d) I also understand that whilst on Shared Parental Leave, apart from working on 'Shared Parental Leave in Touch Days within my substantive post', I must not undertake paid or unpaid work on the Trust Bank or outside the Trust, during my contracted hours without the written approval of my manager and HR. I also confirm that I will seek written permission if I intend to work for another employer outside of my contractual hours, during my paid Shared Parental Leave. Any breach of this clause could be classed as gross misconduct and may lead to disciplinary action and referral to the Trust's Local Counter Fraud Specialist.

Signed: _____ Date: _____

- To qualify for SPL you must complete and return this form to your local HR Officer and your Service Director or Line Manager no later than 8 weeks prior to the date you wish your SPL to commence.
- Your partner must complete page 3 of this form in full and sign the declaration.
- Please provide a copy of your child's birth certificate/confirmation of placement from the adoption agency along with this form
- All details of your SPL and, if applicable, pay will be confirmed in writing by your local HR Officer
- Please contact your local HR Officer as soon as possible, should your anticipated dates change.

This section of the form must be completed by the partner of the member of staff applying for Shared Parental Leave

Please complete the form in BLOCK CAPITALS if handwritten.

Member of Staff Name & Department	
Details of partner:	
Title	
First Name	
Surname	
Place of work & contact number	
Home Address	Postcode
Tel Number (Home)	
National Insurance Number	

I declare that I have now given notice to my employer that I am returning to work from my maternity/adoption leave and the relevant details are as follows:

The start date of my maternity/adoption pay period was:	
I intend to return to work from my maternity/adoption period on:	
Total amount of shared parental leave available	

- I confirm that I have been in receipt of either Statutory Maternity/Adoption Pay or Maternity Allowance, following the birth of my child/ placement of my child (please delete as appropriate).
- I confirm that your employee named above is my child's father/ my spouse/ my partner or civil partner.
- I confirm that your employee named above has the main responsibility (apart from my responsibility) for the upbringing of my child.
- I confirm that your employee named above is, to my knowledge, the only person exercising the entitlement to Shared parental Leave, and is the sole applicant for Shared Parental Leave pay in respect of my child.
- I consent to the Trust processing the information contained in this form, and contacting my place of work if necessary.

I declare that all details stated on this form are correct:

Signed..... Date:.....