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Briefing 09-62

# Flexible working rights; Law and best practice guidance and its role in service transformation

This briefing is provided to APSE contacts in England and for information to Wales, Scotland and Northern Ireland

## Key issues;

- The Flexible Working (Eligibility, Complaints and Remedies) Regulations 2002 (S.I. 2002/3236), widened the scope of the right of employees (under section 80F of the Employment Rights Act 1996) to request a contract variation.
- The right to request flexible working was extended to parents of children aged between six and 16 from 1 April 2009. The legislation already covers parents with children aged six and under, or children under 18 with a disability, as well as carers of adults.
- As well as guidance available from BERR the Equalities and Human Rights Commission has produced new guidance which explores how flexible working can help businesses.
- Within an economic downturn greater use of flexible working arrangements can provide an effective mechanism to respond to both economic turbulence and service transformation needs

## 1. Introduction

Flexible working within local authorities, police and fire authorities, can often mean the operation of a flexible working day, with time accrued, to cover additional hours worked spent within an office or depot environment. Some councils have introduced more radical flexible working policies, many as a result of negotiations following the implementation of new pay and conditions under job evaluation and single status, often referred to as 'Part III' changes. However recent changes to legislation mean that employers have new obligations to consider flexible working applications from a much broader group of staff and on a broader basis than many existing flexible working schemes. Whilst the statutory requirements may limit the right to request flexible working to parents of children aged 16 and under from 1 April 2009, or children under 18 with a disability, as well as carers of adults, many employers would want to include a much broader approach to cover all employees, dependent upon business needs. The Equalities and Human Rights Commission has published a new guide to explore the benefits and considerations to be applied in flexible working arrangements and to share best practice case studies. This briefing explores issues raised in the new guide and applies a public sector perspective.

## 2. Business benefits of flexible working arrangements

New ways of working have spread rapidly over the past decade. Whether within the public or private sector providers face a 24/7 demand for services. Technological advances and widespread changes to working patterns will mean local residents want to access public services at different times. In the current economic climate the public sector needs to be even more discerning in how it manages costs. Making services available on a broader time frame can have cost implications. Moreover as employees, across all sectors, face increasing pressures to balance their work and home lives it makes good economic sense to provide flexibility as a tool in recruiting and retaining motivated staff. Increasing flexibility helps to create a fairer working environment for everyone and if properly implemented give managers a powerful tool to respond to both customers' and employees' needs.

The Equalities Commission found that parents' top priority for improving work life balance is to have a wide range of flexible jobs. Whilst the law gives the 'right to request' flexible working to parents of children up to and including the age of 16, parents of disabled children up to 18, and carers of adult relatives it would appear that flexibility is an issue of great importance right across the workforce - not just for those employees who fall within the scope of the legislation. More employers are now voluntarily taking action to encourage new ways of working, not because of the regulations but because flexibility is widely seen as good business practice that can benefit companies and employees. They are making alternative working arrangements available to all their staff when there is a good business case for doing so. Under the legislation Employers must consider requests seriously and give objective business reasons if they have to turn them down.

## 3. Flexible working in response to the economic downturn

There is an ever increasing body of evidence that the business benefits of new ways of working in both benign and tough economic times can cut costs, boost productivity, motivate people and release more potential. According to a British Chamber of Commerce survey most employers who have introduced flexible working say it has had 'a positive impact on the business'. Many private sector companies have used flexibility creatively to respond to the recession, enabling them to cut costs while retaining skilled staff. Whilst APSE is not suggesting the use of flexibility as a means merely to cut costs, where there is employee and trade union agreement to reduced-hours working, such as part-time work, job share and term time only working, it can be used to redistribute work across more posts and avoid redundancies. Helping to avoid redundancy also avoids the loss of skills and knowledge within the public sector if more experienced staff are lost entirely from the workforce. Avoidance of redundancy also means longer term cost savings in future recruitment to replace highly skilled employees.

Examples cited by the Equalities and Human Rights Commission include electronics and audio company **Richer Sounds** which encourages its staff to move to a four-day week when business is slower. Most staff at **KPMG**, one of the big accountancy firms, volunteered to work a four-day week or to take a sabbatical on reduced pay if necessary, so the firm could avoid big job cuts. The **Financial Times** newspaper offered staff an extra week or more of holiday at 30 per cent of pay. **Honda** closed its Swindon car factory for four months. When workers returned, they agreed to cuts in pay and hours. Law firm **Norton Rose** asked staff to volunteer to work four-

day weeks or take sabbaticals on reduced pay to avoid job losses. Most agreed, and hundreds moved to shorter weeks.

According to a CBI survey on the impact of the 2009 recession, nearly two-thirds of employers were introducing or considering changes to working patterns – and using flexible working in particular – to cut costs and retain staff. Employers can struggle to keep staff engaged and loyal when wages and bonuses are frozen but some employers who offer more time off – even at the expense of pay – can find that this is a way to maintain morale. However it should be recognised that reductions in pay may not be fully offset in other ways – such as savings in childcare costs or travel to work costs and will not be universally accepted as either palatable or workable as they are very much dependent upon an employees' individual circumstances. In the case of local government the high proportion of staff who are already in part time or low paid occupations may find that any loss of earnings is too big a barrier to overcome.

#### **4. Performance improvement and service transformation**

The Equalities and Human Rights Commission report identifies performance improvement as an outcome of greater flexibility. This is of significance for the public sector when exploring service transformation to deliver on objectives such as spreading service cover over a broader band of hours, providing more responsive flexible service delivery, geared towards customer needs, and maximising the use of resources as part of the greater financial constraints that will apply post the projected local government settlements for 2010/2011. Benefits can include:

##### **Better performance:**

- Increased efficiency and productivity
- Improved customer service cover
- Staff understanding each other's roles better
- Greater employee satisfaction and loyalty

##### **Cost savings:**

- Higher staff retention, lower recruitment and training costs
- Reduced absenteeism, overtime and workplace stress
- More efficient use of office space

##### **Better people management:**

- Enhanced reputation as an employer
- Access to new talent pools
- Better succession planning

##### **Environmental benefits:**

- Less commuting by employees working from home or satellite offices

These benefits can prove significant for the public sector in other ways. For example reduction in travel can have a positive impact on the carbon footprint of the council by avoiding unnecessary car journeys. Asset management in terms of office space was considered a major issue within the Operational Efficiency Programme Final Report under both the property strand led by Lord Carter of Coles and Asset Management and Sales, led by Gerry Grimstone. Therefore a reduction in overall space occupied could produce some efficiency savings. Reduced absenteeism, and overtime reduction, are also critical to labour cost management and productivity. Greater flexibility can help employees create a genuine worklife balance.

## **5. Key principles to make flexibility work**

Managing workflow effectively, as well as managing employees as critical business resources can help to achieve better service delivery. Flexibility is an important business tool for the public sector. Flexibility can help to improve performance and customer service. It can create a win / win situation for service users and employees. Whilst everyone should be entitled to make a case for working flexibly, there will be situations where a specific arrangement will not work because of commitments to customers or service users. Where this is the case, the Equalities Commission guidance encourages employees to look at other options that may work better for all sides. Managing both employee and customer / service users expectations from the outset will be critical to the success of any scheme.

Different arrangements will work for different types of services. The Equalities and Human Rights Commission argues that there is no one-size-fits-all solution and that rigid off-the-peg arrangements are less likely to work. The best working arrangements are tailored to the job and individual. Flexibility must involve give-and-take on the part of employers and managers and employees. Responsibility for making it work must be shared by employees and managers. There should be an honest assessment of opportunities and challenges in any proposed arrangement with openness and honesty.

The Equalities and Human Rights Commission also views leadership as essential stating that 'you need to have buy-in from senior managers or directors to implement workable solutions that benefit the business. Individual managers must translate this support into tangible results for their teams'.

## **6. Specific issues that relate to issues of flexibility**

The Equalities and Human Rights Commission report identifies some common issues that can fetter the development of flexibility, and they attempt to address some of the common misconceptions and barriers to achieving greater flexibility. In particular that flexible working is only for 'working mothers' or those who are less committed to their jobs. They specifically identify the following:-

### **a. Presence does not equal performance**

It is important to judge the performance of flexible workers by measurable results and outcomes, not by how many hours they work or how long they stay in the office.

### **b. Arrangements are not forever**

New working patterns need to be flexible enough to respond to business or service requirements. In all cases you need to maintain a dialogue – both sides should keep the possibility of change alive through regular reviews and in the case of the public sector through an open dialogue with the trade unions.

### **c. Flexibility can work for all**

Employers should not make assumptions about who will and who will not want to work flexibly. Most employees will respond positively for a range of reasons beyond childcare or other caring commitments.

### **d. Avoid penalising people's careers**

Employees choosing flexible working should not suffer in terms of career development. Business need, performance and skills should be the basis for promotion. As new job opportunities arise; employees and managers should discuss and decide the location and hours of work required taking into account that the right candidate may well be a flexible worker.

## **7. Case studies**

### **a. Case study - BT**

BT is a pioneer of flexible working, having introduced it more than 20 years ago.

Office costs have been reduced significantly with a £500million reduction in property portfolio. Productivity has increased. BT found that home workers are up to 30 per cent more productive than office colleagues. Call-centre service cover has also improved with customers able to contact BT when convenient to them. Quality is also up with home-based call centre operators give comparable or better quality responses than office colleagues.

BT is a pioneer of flexible working, having introduced it more than 20 years ago as a business strategy. Over 75,000 of its 86,000 UK employees work flexibly in some way, from senior managers to contact centre employees; nearly 17 per cent of staff work from home. Flexibility has achieved these business results: Absenteeism is down by a 20 per cent reduction among home-workers with travel also down providing a reduction of 1,800 years in employees' commuting time, saving 12million litres of fuel.

The reduction in travel time as well as fuel shows a positive impact on employees through reducing stressful rush hour driving as well as the environmental benefits of fuel and car use reduction.

### **b. Case study National Grid**

At National Grid, which runs gas and electricity transmission networks, Company Secretary Helen Mahy believes she is an exception in working flexibly and encouraging her team to do so. Ms Mahy states 'This is perceived as a traditional area and there's a view that you have to be where the board is and where the management and head office are,' she says. 'Yes, you do – but you don't all have to be there at the same time.'

Ms Mahy, in her dual role as Group General Counsel and Company Secretary has around 180 staff in the UK and US, works half a day each week from home during the winter to deal with domestic arrangements for a few hours before returning to work in the evening. 'If there was an emergency I wouldn't do it, but it helps my work-life balance and I keep my diary clear.' A senior colleague she recently appointed also works from home from time to time. About half her UK team of 70, from recent graduates to more mature staff, have some type of formal or informal flexibility. This has helped to recruit and retain skilled people.

The National Grid operates a ground rule that someone must be in the office every day – so while many staff work flexibly, not everyone can work from home on Fridays. Ms Mahy states that managers working flexibly must tread a fine line between being available and being a good role model. 'There's a perception among employees that managers say they're working

flexibly when in fact they're working all the time. You have to be quite disciplined and show them that the reason you're not in the office is because you need to do something else that day between 4pm and 6pm -so workers should be encouraged to not log in and check emails until 6pm.

Ms Mahy therefore advocates 'setting the rules of engagement' and ensuring that they are abided by through both employees and managers stating that whilst there may be a one off need to ask someone to check emails outside of core working time people should not expect to have to do this on a continuous basis as it undermines flexibility. 'You may ask them if they'd mind checking their emails late one day, but don't expect this all the time'. Conversely, if people are abusing flexibility, Ms Mahy advocates that you have to 'come down very hard on them and be seen to be doing so.'

Ms Mahy makes some important points as it is often a need to change a cultural approach to flexible working and this needs to be supported at a corporate level.

## **8. Individual case studies**

### ***a. Katherine Thomas - Flexible job helps disabled archivist keep working***

Katherine Thomas works for the Welsh Assembly Government as equal opportunities adviser to the museums, archives and libraries of Wales. A qualified archivist, she has an energy impairment that means she can no longer work fulltime and finds travel very tiring. Trying to find a manageable job 'was an absolute nightmare because so few organisations offer part time or flexible working in my field', she says.

Katherine found her current job with the Welsh Assembly Government because it accepts part-time applications for full-time jobs. It also offers flexibility. While she had to relocate from Derbyshire to West Wales to secure suitable employment, the arrangement means that she can now pace herself, to her own and her employer's benefit. 'The Welsh Assembly Government's attitude to part time and flexible working basically gave me a chance, when no one else would, and allows me to use the abilities I have, to benefit them, instead of forcing me into a position of unemployment or employment which is not commensurate with my abilities.' 'With flexible working, I can do a really long day with travel when needed and have the next day off to recover. Over the month I will work my contracted hours. This works for me, and it works for them. I have been in post now for over four years and have never taken a day off sick. 'It really is a win-win situation and I am aware of no other employers who would work with me in this way. The attitudes of most employers thus discriminates against me as a disabled person and also prevents them from accessing high quality potential staff who don't "fit" their mould.'

### ***b. Ian McIntosh - Addleshaw Goddard***

After 25 years as a corporate lawyer, working long hours on mergers, acquisitions and joint venture transactions, Ian McIntosh wanted greater work-life balance and a change of role. As he turned 50, he took advantage of an option to work flexibly at Addleshaw

Goddard, the firm where he is an equity Partner.

For years he had been working 14 to 15-hour days, including a lot of travel. In May 2009 he switched to a four-day week, reduced his transactions workload and took on a new role leading the development of the firm's offering to its financial services clients. On Thursday evenings, he switches on his 'out-of-office' message. 'Officially I don't work Fridays and I make quite big efforts not to look at my Blackberry those days. My secretary, who really helps here, looks at my emails and phones me if there's something urgent.' If Ian McIntosh has to work on a Friday, as happens occasionally, he takes a day in lieu; He maintains that it has made a difference. 'I feel a bit fitter and healthier. I've done some swimming and cycling with my son. I've read books, listened to music and talked (and listened!) to my family more. I've found I have a greater sense of energy and possibility, and also more urgency and achievement in the four days I work. I also get a bit more sleep.' As a partner, he admits it's hard to switch off totally. Clients and other contacts sometimes phone his mobile on Fridays. 'The things they are talking to me about are really urgent for them, and that's the service the firm has to provide, but I'm sure we will evolve better on how we cover that as a business.' His working arrangement is still an exception in commercial law. 'There's a long hours – and strong service – culture and a sense that this is what's expected,' he says. 'However, the people I work with in the firm, whether it's partners or other staff, see it as a really good sign that the business is comfortable with me doing this.'

## 9. APSE comment

Flexible working can offer numerous advantages. Within the current economic climate many employees may find that they themselves have faced challenging individual circumstances – for example changes to partners working arrangements or partners taking on additional hours to supplement family income. The balance between work and home life can therefore be difficult.

Whilst employers should rightly be encouraged to think in innovative ways about flexibility there are a number of safeguards that need to be understood. For example, ensuring that a flexibility working scheme still offer employer's protection through consideration of the new legal duties and responsibilities that the new rights offer. **Any flexible working scheme should be reviewed to ensure they comply with the new duties on employers.**

APSE would also advocate flexible working arrangements providing the scope for delivery against individual service needs. For different front line services there will be different needs. Assessment of flexible working should be considered alongside the continuous improvement of the service, health and safety and insurance considerations. Assessment of risk should be proportionate to the circumstances – for example ad hoc flexible arrangements compared to a full scale change in working arrangements on a permanent basis will require different responses.

Regular reviews are also critical. Employees and employers will find from time to time that circumstances change and therefore regular reviews will help both sides address how changes in circumstances can be met. Allowances should be made for participation of employees in communication terms, including arrangements that would allow employees who may work from different or home locations the ability to be a part of and receive information from their trade union. Employers must also ensure that the working environment does not lead to excessive hours by ensuring effective monitoring of work.

The chart overleaf provides a useful diagrammatical approach to how an organisation might consider a revision to its flexible working arrangements. Further guidance is available from the following links:

<http://www.berr.gov.uk/whatwedo/employment/workandfamilies/flexible-working/index.html>

<http://www.equalityhumanrights.com/>

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