

# Making flexible working the default

## Working Families' Consultation Briefing Note

November 2021

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### Summary

There are striking inequalities in the labour market in relation to flexible working. While many employers are progressive in this area and offer flexible working arrangements, informally, from day-one of employment, others are resistant to such practices, making it hard for employees to balance their work and personal circumstances.

Hence, the statutory framework provides a vital route for individuals to access flexibility who otherwise cannot. But reforms are required to improve the process – ensuring greater fairness and consistency – and strengthen enforcement to protect the rights of employees.

In this consultation response Working Families has expressed its support for the following:

- A day-one right to request flexible working for new employees
- Jobs to be designed and advertised as flexible unless employers have good reasons not to
- The limit on statutory flexible working requests to be changed to three a year
- Requests to be decided upon (or an implementation plan to be in place) within two months
- The new legislation to promote dialogue through the exploration of alternative options when requests cannot be met
- Employers to provide clear reasons for why requests cannot be met and for tribunals to have the powers to fully interrogate these
- Large employers to monitor their flexible working arrangements alongside their equality and diversity reporting activities
- The BEIS Flexible Working Taskforce to:
  - Create guidance and resources to be created for employers to help handle requests
  - Explore how better data could be collected on statutory requests and flexible working for evaluative purposes

To inform this response, Working Families has drawn upon insights from its Legal Advisory Service and Employers Services Team – last year, these services worked with over 150 employers reaching 1/29 UK employees, and provided bespoke legal guidance to over 3,100 parents and carers. We heard directly from employers, and parents and carers themselves through online discussions with our [Parents and Carers Panel](#), and two surveys to capture managers' and employees' views on the proposals. Roundtable meetings were also held with the [Families and Work Group](#) and our [Academic Advisory Board](#).

For further information about this response, please contact Simon Kelleher, Head of Policy and Influencing via [simon.kelleher@workingfamilies.org.uk](mailto:simon.kelleher@workingfamilies.org.uk)

## Consultation response

### Questions 8 and 9: whether the right to request should become a day-one employment right

#### Opening-up the jobs market

Working Families strongly agrees that the right to request a flexible working arrangement should be extended to cover new employees from day-one of employment, and recommends that this legislative change is accompanied by a call upon employers to advertise vacancies as flexible whenever possible.

#### *Benefits to employees: equalising access*

There are over 11.5 million working parents in Great Britain,<sup>1</sup> and an estimated 7 million working carers across the UK,<sup>2</sup> making up 38% and 20% of the GB and UK workforces respectively. The ability to access flexible working arrangements is highly prized by parents and carers.<sup>3</sup>

In the first instance, a day-one right to request would be of enormous benefit to employees with parental or caring responsibilities who work for the minority of employers who do not provide access to flexible working arrangements other than through the limited statutory framework.

The evidence suggests that access to flexible working arrangements is not uniform, and that emergent working practices in the wake of the pandemic may be widening disparities. Increases in home-based working for example have disproportionately benefited those in knowledge-based jobs with high incomes.<sup>4</sup>

The majority (69%) of employers who took part in Working Families' 2021 Employers Benchmark, accept flexible working requests from day-one. Evidence from the CIPD's Good Work survey also suggests that 50% of employees work flexibly, the majority on an informal basis.

Despite the evidence of good practice from employers, and the prevalence of successful informal arrangements, the statutory framework remains a vital route for accessing flexibility and one that needs to be made easier, particularly for vulnerable groups who are unable to participate in the labour market without it.

Working Families frequently hears from parents and carers who have had – or are having – negative experiences with new employers. Flexible working is consistently one of the most viewed topics on our website and most popular subjects pursued in our legal advisory service. Notably, single parents, and carers of disabled children and adults are overrepresented among our service users.

Our service users and members of our parents and carers panel tell us that the six-month waiting period to file a statutory flexible working request is simply too long to wait when they need flexibility to meet their immediate caring responsibilities. Factoring in the three-month response time employers have, the reality is that it can be more like nine months before an employee may know if a flexible working arrangement is possible. Parents and carers in this situation report maxing out their annual leave or resorting to unpaid leave, going into debt to cover childcare, or quitting their jobs to cope.

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<sup>1</sup> ONS, Labour Force Survey (LFS): *compiled figures for England, Scotland and Wales (Jul-Sep 2020)*

<sup>2</sup> Carers UK, [Carers Week 2020](#)

<sup>3</sup> Working Families: *Evidence from recent (Nov, 2021) polling of 2,800 parents found 70% to be working flexibly in some form – 41% to manage childcare, 11% to meet other care needs.*

<sup>4</sup> Resolution Foundation: [Begin Again?](#)

Ensuring that all employees have the right to request the arrangements they need in a timely fashion would help to level up the experience of parents and carers who struggle to access the flexibility they need. It would ensure parity with longer serving employees and those benefiting from working for progressive employers offering informal flexibility.

*Benefits to employers and employees: a more dynamic labour market*

A second set of benefits of the proposed reform relates to the associated gains of greater labour market mobility that would be unlocked through the removal of the disincentive to move jobs caused by the 26-week restriction.

Not knowing if you will be able to access the flexible working arrangements you require as a parent or carer in a new role until after six or nine months of service, means that many people will stick with an existing job that offers flexibility.

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*“It is harder to find a flexible job than asking for flexibility once you are on the job”. Mum and carer of autistic children, unemployed*

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This experience is borne out in our recent Working Families Index polling<sup>5</sup> which found, when asking about intentions over the next two-years, 55% of parents indicated that they were likely or very likely to stay in their job as they didn't believe they would get the same level of flexibility elsewhere. While it may benefit retention figures for employers, there are downsides for individuals, families, employers and wider society, which may be lessened by this reform.

- Moving jobs is the best way to secure pay progression.<sup>6</sup> By disincentivising parents and carers from applying to new jobs, the 26-week qualifying period may be negatively impacting the financial resilience of families.
- Similarly, given that the burden of care falls disproportionately on women, making it easier to access flexible working from day-one may further women's careers, see fewer women working below their skill level, and thereby reduce the gender pay and pensions gap.
- Employers themselves would benefit from a wider talent pool to recruit from, as according to polling carried out in June 2021 that 69% of parents would consider jobs advertised as flexible as more attractive.<sup>7</sup>

*The balance of responsibility and the lack of information on available flexible working arrangements*

A day-one right to request is likely to deliver multiple benefits for individuals, employers, and society. However, there is a risk that without accompanying changes to the way employers recruit, the vision of flexible working as the default position will not be realised.

While it is right that employees should express what they need, the right to request framework places the onus on the individual employee to say what they need and articulate how it will work and how it might impact the business or service delivery.

The challenge with this approach is that unless the parameters of what is possible in relation to flexible working are made clear when someone applies for a role, a new employee may end up

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<sup>5</sup> The Working Families Index will be released in 2022

<sup>6</sup> Forbes: [It Pays to Switch Jobs](#)

<sup>7</sup> Working Families: [Flex the UK: Building Back Better](#)

submitting an inappropriate statutory request, which may waste time and cause relationship tensions when it is rejected.

In a survey of 317 parents and carers for this consultation response, 59% of respondents said they did not feel employees generally knew enough about flexible working options to make a successful request. However, 75% stated that they believed their manager understood the different ways in which their roles could be performed flexibly.

Parents and carers who advised Working Families on this response also raised concerns over discrimination when it came to new employees making flexible working requests, and how this stopped them requesting the flexibility they needed.

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*“The very act of requesting flexible working is still regarded as a lack of commitment to the job or the organisation and still attaches a negative perception on the part of employers. Until this changes, it will always be a risky approach”* Father of three, Full-time employment

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The lack of available information for employees on the types of flexible working arrangements available in each role feeds into a wider supply and demand issue for parents and carers who are looking for work.

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*“Trying to find a new job for 3 days a week to fit in with my current childcare is impossible”.* Mum of two young children, Experiencing redundancy

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This experience is backed up by the 2021 Timewise survey of flexible jobs showing that 3/4 jobs advertised are inaccessible to people who require flexibility.

The lack of jobs advertised with flexibility particularly disadvantages single parents and parents and carers of disabled dependents. It translates into a single parent unemployment rate of 12%, and the disproportionate number of carers among the unemployed (20%).<sup>8</sup> It may also contribute to the fact that 1/10 (9%) of parents of dependent children in Great Britain are economically inactive due to looking after family,<sup>9</sup> making up almost 1/5 of economically inactive people.<sup>10</sup>

#### *Addressing the information problem for employees: advertising flexibility*

The Employment Bill presents a unique opportunity to address the lack of information on available flexible working arrangements, and to foster a more equal division of responsibility for developing flexible working arrangements between employee and employer.

Given the mass experience of forms of flexible working during the pandemic, and the shift towards hybrid arrangements that many employers are currently making, now is the ideal time to ask employers to ensure that flexible working options are included in job adverts when possible.

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<sup>8</sup> LFS and Carers UK: [Juggling Work and Unpaid Care](#)

<sup>9</sup> LFS

<sup>10</sup> LFS

Employers should be required to advertise jobs as flexible by default with the types of flexibility available specified as part of the job ad. Working Families' employer members described the benefits of this approach for this submission as frontloading the work around flexible working at the recruitment stage so they could reduce the number of requests and be better prepared to handle them when they did come in.

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***“I think every role should be flex from the first and that we should not have to raise a statutory request every time they want to make a change” Senior HR Director, Financial Sector***

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This experience is backed up by findings from Working Families' 2021 Employers Benchmark, revealing that, on average, employers who advertise the majority of roles with explicit reference to flexibility receive half as many statutory flexible working requests as employers who advertise less than half of their roles flexibly (1/100 versus 2/100).

#### *Evaluating progress*

Data regarding the annual number of flexible working requests, their outcomes, and contextual information on demographics and sectors is limited meaning that evaluations of policy changes to the right to request may be challenging, particularly as many employers move to hybrid working models. To address this, the Government should commission the BEIS Flexible Working Taskforce to explore ideas around how to improve our collective understanding of the use of the right to requests framework, and what evaluative approaches might help track and promote the availability of good quality flexible jobs.

### **Questions 18-27: The administrative process underpinning the Right to Request flexible working**

Enabling employees to access flexibility as their circumstances change in a timely manner The statutory framework that limits employees to one flexible working request per year should change to allow for up to three formal requests in a twelve-month period. A decision, or implementation plan, should be in place within two months of the date of the original request.

Statutory flexible working requests are generally seen by employees as an option of last resort, with informal discussions and negotiations with line managers being the preferred route for securing flexibility. However, as outlined above, the statutory framework provides a vitally important mechanism for employees who do not have access to flexible working arrangements and for those who need to build in greater certainty regarding the flexibility they have.

Fundamentally, the right to request flexible working arrangements should be based upon individual need rather than the length of an employee's service or the number of requests they have made previously. Employees who require flexibility to meet caring responsibilities, or to manage health problems, should not be limited in their right to request by the poor practice of managers who may have rejected previous requests without due consideration, or failed to provide any fair criteria to the employee on what might be permissible.

Among the parents and carers that contributed to this submission, many spoke of the unpredictability of changes in life circumstances and the need to respond to these as they arose, and concerns to avoid being locked into pre-agreed arrangements if these were no longer suitable.

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***“My mother-in-law helped with school pick-ups but within an 8-month period was diagnosed with MS. I had already made a flexible working request to work around her availability which then changed due to her condition worsening”***

*Mum of one, Full-time employee*

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The challenges around childcare and the uncertainty of being in the ‘sandwich’ generation were repeatedly presented to us as reasons for extending the number of requests an employee should be able to make a year.

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***“I worry about the future, if our income decreased then we wouldn't be able to afford childcare and would have to reduce nursery time and I wouldn't be able to make another request. Having a policy that has unlimited amount of requests would be a great peace of mind for the future”***

*Mum of a toddler, Full-time employment*

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Many of the employers who responded to our call for evidence were open to multiple flexible working requests and found that employees were reasonable in their requests. They recognised that requests were not made lightly and that long delays in responding created stress and uncertainty, which could be detrimental to job satisfaction and productivity. Requests to amend working hours or locations can generally be responded to quickly, however, for some requests to be accommodated, more consideration and changes are required.

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***“Making changes to things like duty patterns and through payroll, etc mean a longer period is likely to be needed so more than one month, less than two may be a better compromise to achieve.”***

*HR Manager, Public Sector*

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Accommodating requests on a trial basis before making contractual changes is also common practice amongst Working Families’ employer members, as it can be used to assess the suitability of new arrangements before confirming them in an employee’s contract. Having clear flexible working policies and active parent networks were cited as good ways of informing employees that time limited requests are available, and parents and carers said that sources of information about childcare and social media could be good ways to raise awareness regarding flexible working options. While trialling and observing the effectiveness of new working practices is to be encouraged, as it will help promote informal flexibility and may reduce the need for statutory requests, time limited requests should not be used in lieu of providing secure arrangements for employees who need longer-term certainty around their working arrangements.

We strongly recommend that BEIS leads work to create a resource for employers to aid them through the entire process, clearly setting out available options to consider in role design and work allocation. With improved information, advice and guidance for employers on handling requests, the process will become more efficient for them and also more responsive to the pressing needs of individual employees who submitted them.

### Questions 14-17: Requiring the employer to suggest alternatives, where possible

Working together to explore alternative flexible working options

The requirement for employers to show that they have considered alternative flexible working arrangements when rejecting requests would facilitate meaningful dialogue between employers and employees, and lead to improved outcomes for both parties. Accordingly, this requirement should include a duty to discuss alternatives with employees and guidance should be provided to help employers manage the process fairly and consistently.

Working Families regularly hears from parents and carers who are frustrated with the handling and outcome of their flexible working requests. In many instances, the inflexibility of individual managers led parents and carers to leave their jobs.

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***“I wasn’t given any other options when my request was denied. The lack of alternatives from my employer showed me they hadn’t thought about it at all. It was return full time or quit” New mother, Charity sector employee***

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This experience is reflected in the number of new mothers who leave their jobs. The UK’s gender employment gap is around 12%,<sup>11</sup> and the EHRC estimate that as many as one in 20 women are made redundant during pregnancy, maternity leave or on return from leave. The scale of the experience was also attested to by a parents involved in parent support groups and unions.

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***“I have been involved with innumerable flexible working requests for a host of reasons and the recurring theme is that they are badly managed from the start. Managers instantly view them as problematic and are inclined to reject them. At appeal it is clear no proper consideration was made and I have never experienced anyone being offered an alternative. This has to change” Mother of two children, one with additional needs, NHS worker and union representative***

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While many employees are frustrated by the way in which their requests are handled and dismissed, there is evidence among leading employers in flexible working of a different process which is more enabling. For example, our employer members routinely discuss alternatives with their employees. The reasons cited for holding meetings to explore alternative arrangements include: to improve engagement and retention, to prevent poor productivity, enhance performance, and to ensure that a more suitable arrangement can be found for both parties – this may include a temporary rather than permanent arrangement. The Working Families Employers Benchmark shows that the practice

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<sup>11</sup> EuroFund: [The gender employment gap: Challenges and solutions](#)



of meeting and discussing alternatives is associated with an increase in the rate of approved requests.

When asked about how difficult it would be for employers to show that they have considered alternative working arrangements when rejecting a request, the consensus from our employer members was that it would not be too onerous to achieve. *“It should be relatively easy”* said one respondent, who added that an employer can list the other options they considered. Another employer respondent told us that it is *“common practice for managers to confirm decisions they have made”* so this would not require additional work as employers already have to confirm the result of their decision in writing. It was also suggested that the process could be aided by the use of a template, an approach already used by several employers.

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***“They need to complete a form which asks what other options might work. The form used by employees and managers takes them through the process and they have to demonstrate that they have reviewed and discussed alternatives.”***

*Diversity & Inclusion Lead, Financial Sector*

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If a requirement for employers to show consideration of alternatives was introduced, the BEIS Flexible Working Taskforce should be commissioned to create new guidance and resources for employers on how to adopt flexible working practices and better manage requests. This should include a simple template form showing the original request, with prompts for considering alternative working arrangements such as *‘has consideration been given to when, where this role, or aspects of it, take place?’*. Updated guidance should also feature examples of different types of flexible working arrangements and how these might be trialled and implement in different settings and among different groups of employees.

This type of cooperative process is favoured by parents and carers with 93% of respondents answering ‘yes’ to the question ‘Do you think employers should have to show they have thought about alternative flexible working options when rejecting requests?’. This approach not only makes employees feel valued, but also shifts the onus of responsibility for developing effective flexible working practices on to a more equal footing between employee and employer.

Showing that requests had been considered was more popular amongst the parents and carers we spoke to than the idea of requiring employers to offer ‘a single alternative’. Only 40% of respondents to the parent and carer survey supported this policy, with 38% answering ‘not sure’. One working mum who had experience of different forms of flexible working told us that *“a more iterative conversation would be better”*, while others expressed concerns that this may result in box ticking and employers offering inappropriate alternatives or effective demotions to staff requiring flexibility.

Additionally, parents and carers told us that asking employers to show they had considered alternatives would better protect employees from biases on the part of managers and from managers who rejected requests by default as *“having a formal, transparent structure for discussion will ensure decisions are made on an objective basis”*. Parents and carers also told us that a requirement to meet would also provide an important opportunity to *“communicate how rejecting a proposal is going to impact on their ability to undertake their current contracted work commitments i.e. impact on mental health / ability to care for a vulnerable family member.”*



## Questions 11-13: Whether the eight business reasons for refusing a request remain valid

Declining flexible working requests: providing a genuine explanation

The pandemic has exacerbated existing inadequacies in the application of the eight business reasons which impede genuine dialogue between employers and employees on the implementation of effective flexible working arrangements. At present, the system makes it too easy for employers to refuse rather than approve requests due to the comprehensive nature of the list of reasons. Employers should be required to provide a detailed explanation of why a flexible working request cannot be met and propose alternative arrangements.

We have heard directly from our service users on how many of the new ways of working adopted by employers since March 2020 have undermined the validity of the framework by which employers can reject flexible working requests. This has been most acute in situations in which staff who worked successfully on a remote basis during lockdowns are now denied even limited opportunities to access hybrid working, often on the basis that their individual performance may be impacted.

Dissatisfaction with the application of the eight business reasons for rejecting flexible working requests long preceded the pandemic. Parents and carers who contributed to our call for evidence for this consultation told us that they had received inadequate or vague explanations for why their requests were rejected. In several instances, users of Working Families Legal Advisory Service had just received a copied and pasted list of the eight business reasons in the email that declined their requests.

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*“There’s no explanation as to why, especially when you’ve laid out exactly how it would work and ways to limit impact on the team. My employer just says they need people working full time in these roles” Mum of two children,  
University employee*

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Working Families recently collaborated on a report with King’s College London that considered parents’ experience of job quality. We interviewed parents working in diverse sectors and uncovered the pivotal role of flexible arrangements in their conception of job quality. But they often spoke of the failings of the process of requesting flexible arrangements because of the way employers denied them due to unsubstantiated business reasons.<sup>12</sup> The comprehensive range of reasons meant it was too easy to refuse and this harmed working relations.

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*“There are...statutory codes of practice that employers are supposed to observe, but from my experience they rarely know them and you often have to fight quite hard... they can always find a way, to say “well, business needs are such and such so I’m sorry but you’ve got to meet the business needs” Father,  
higher education sector worker*

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<sup>12</sup> Working Families and KCL: [Working parents, flexibility and job quality](#)

The breadth of the business reasons, combined with the structuring of the statutory process with the onus of responsibility on the employee to present the positive business case, does little to encourage the genuine dialogue required to achieve a default culture of flexible working.

Many who require flexible working arrangements are pessimistic about the options open to them when even their modest requests are rejected. Parents and carers, who are already trying to balance work and caring responsibilities, are understandably reluctant to jeopardise their working relationships by making formal appeals, launching grievances, or going to tribunal. A single parent, who had to leave a career as a police officer due to a lack of flexibility told us: *“Employment law is meaningless as employees can't afford to pursue legal action”*. Even for the cases that make it to tribunal, the tribunal has no powers to cross examine the business reasons provided by the employer.

In the absence of an effective framework to support employees' reasonable requests, and statutory rights to challenge refusals, they will always be reliant upon considerate and informed managers to reconcile their work and caring responsibilities. This can lead to insecure working contexts which our research on job quality found to be highly problematic for parents and carers who need security and control and do not want their flexible working arrangements to be contingent on a particular manager.

Consequently, the range of reasons provided should be more limited and employers should be required to provide a detailed explanation – with supporting evidence – of why a request cannot be met. Additionally, tribunals must be invested with powers to probe these explanations and award employees up to 12 weeks' wages as compensation.

## Question 28: Suggestions for the call for evidence on ad hoc and informal flexible working

While this consultation has covered longer-term flexible working arrangements to be secured via the right to request, shorter term flexibility that does not require a change of contract is often required by employees and other categories of workers. Similarly, mechanisms to adjust or swap working hours on an occasional basis would be of great value to many working parents and carers who often take unpaid leave to fulfil caring responsibilities.

A particular concern of Working Families is the emergence of one-sided flexibility and casual arrangements, such as zero-hours contracts, in which the contractor benefits from the insecurity of the worker. For parents and carers working in this manner on a regular basis, there is often pressure to accept unreasonable hours for fear of losing out on future work. The future call for evidence on ad hoc flexibility should focus on the rights and responsibilities of workers and employers and explore the following:

- Mechanisms to enable employees to swap days so they do not have to take unpaid parental leave or time off for families and dependents
- Quantifying the personal, social, and economic costs of a lack of access to flexibility
- The experience of workers and the impact of insecurity on their families and dependents
- Mechanisms to provide insecure workers with access to flexibility and not be penalised for it
- What good flexible working looks like
- The impact of restricting the use of zero-hours employment contracts upon employers
- The extent to which workers have genuine recourse to justice and adequacy of enforcement around labour rights