

Precedent Appeal Letter [from 6 April 2024]

Flexible working request refusal

Background notes

It's frustrating when your employer turns down your flexible working request, particularly when you've put time into a well-considered request and your employer dismisses it.

Below are two precedents:

1. a 'statutory flexible working request appeal letter'; and
2. a 'non-statutory flexible working request appeal letter'.

Please use these templates as a starting point, making sure to add in the specific facts about your flexible working request including details of your role, responsibilities and circumstances.

Employees can now make a statutory flexible working request from day one of employment. However, if you have already made two statutory requests in the last 12 months, or want to keep your request informal, you can still make a non-statutory flexible working request.

Please note there is no statutory right to appeal your employer's refusal of your flexible working request.

However, the Advisory, Conciliation and Arbitration Service for workplace relationships, ("[ACAS](#)") recommends that employers should allow their employees to appeal. ACAS is an independent public body, whose [Codes of Practice](#) influences the way employers handle disputes with their workforce. ACAS have released [a draft updated Code of Practice](#) for how employers should handle flexible working requests from 6 April 2024, which you can see [here](#).

If your employer allows appeals, they may have communicated this to you in the letter refusing your request. Alternatively, that letter may state that there is a right of appeal in your employer's Flexible Working Policy. If that is the case read the Policy carefully to make sure you understand whether your employer will accept a written appeal, and to ensure you comply with any time limits or formalities that they have stipulated.

If your employer appears to allow no right of appeal, you may want to ask the person who refused your request whether there is a right of appeal. ACAS recommends that employers should hear your appeal if:

- You have new information that was either missed, or unavailable when your employer made their decision.
- You feel that your employer's policy or the ACAS Code was not followed.

If you have decided to appeal, we would advise you to do so using either of these letters as a starting point to structure your argument and develop your case. The letters have been drafted for you to choose which paragraphs are relevant to your situation. This will depend on:

- a. what kinds of flexible working you have requested; and
- b. the reasons given by your employer to refuse your request for flexible working.

Try to be as factual and objective as you can. It's particularly helpful if you can demonstrate that your application for flexible working is reasonable, especially if you show that it won't have a negative impact on the wider business/organisational needs.

Reasons for refusal

Carefully check the reasons your employer has given to refuse your flexible working request. For statutory requests, they should give one or more of the ***prescribed statutory reasons***. These are:

- The burden of additional costs.
- Detrimental effect on ability to meet customer demand.
- Inability to reorganise work among existing staff.
- Inability to recruit additional staff.
- Detrimental impact on quality.
- Detrimental impact on performance.
- Insufficiency of work during the periods you proposed to work.
- Planned structural changes.

If they haven't referred to one of these reasons, or have focussed on some other reason, you may be entitled to challenge them in an employment tribunal. You may also be entitled to challenge your employer if they haven't followed their own procedure so check any Policy, if they have considered seemingly incorrect facts and if they do not appear to have taken your request seriously. You should point this out to them in your appeal.

How to respond

If they have used one or more of the prescribed reasons, you should reiterate why your flexible working request is reasonable, and why you think it would work. Consider the reasons they have given you for refusal and explain why the conclusions that your employer has come to are incorrect.

It may be helpful to point to examples where similar flexible working arrangements have been shown to work in your organisation, as this could prompt your employer to reconsider your request. However, your employer should consider requests on a case-by-case basis. The fact that they may have accepted a colleague's flexible working request doesn't necessarily mean they have to, or will, accept yours.

If you haven't already done so, one thing which you could suggest is a trial period – e.g., for 1-3 months. This way, if your employer doesn't think it's working in practice, you can always go back to your previous working arrangement. In many cases trial periods are a helpful way for you to show your employer how this working arrangement can work for both you and them.

Appeal Hearing

As part of both flexible working appeal letters, we suggest that you request an appeal hearing. Your right to an appeal hearing is discretionary and will depend on your employer's policy. Nevertheless, the ACAS Code recommends employers allow appeals and that any appeal should be heard by

someone not previously involved in the process. It also recommends that you should be allowed to be accompanied to an appeal hearing.

The purpose of an appeal hearing is for you to state your case and demonstrate that the reason your flexible working request was refused is unfounded. This is your opportunity to re-state your case to your employer, which may involve reconsideration by a different person. You can use the factors raised in your appeal letter to structure your thoughts for the meeting. This is likely to be:

1. The strength in your case for a flexible working pattern.
2. The measures you are willing to take to mitigate the impact of your flexible working on your colleagues and the employer's business.
3. The ways in which your employer's original decision to refuse your flexible working request may be considered unreasonable, in breach of your employer's policy or the ACAS code.

As with the initial decision, the outcome of your appeal should be given to you in writing and be dated. If the person hearing the appeal decides to reject your appeal, they ought to state the reasons why. For statutory appeals, your employer must state the prescribed statutory reason(s) relied on.

Please be aware that your employer may refuse an appeal for one of the eight prescribed statutory reasons, even if the original decision maker refused your flexible working request for another (unauthorised) reason. If your employer does allow for an appeal the whole procedure including hearing the appeal should be completed within the two months prescribed.

Statutory Flexible Working Request Appeal Letter

[*Your name*]
[*Your address*]

[*Name and address of employer*]

[*Date*]

For the attention of [*Your manager*]

Statutory flexible working request: appeal of decision

Thank you for your response dated [*date of response letter*] to my flexible working request dated [*date of request*]. I am disappointed my request for flexible working has been rejected. I am writing to appeal this decision for the reason(s) I explain below.

Looking at example grounds 1-15 below insert the relevant paragraphs here, depending on the reasons given for refusing your flexible working request, filling in personal details where necessary.

I am open to any alternative solutions you may have which might work for both of us.

I am also happy to attend a meeting with you to discuss my request in more detail and address any concerns or questions you may have.

I look forward to hearing from you.

Yours sincerely,

[*Your signature*]

[*Your name*]

Example grounds 1-15

1. Refusal of request without a consultation

Use this section where your employer has failed to consult with you before reaching their decision. This is prohibited by the Employment Relations (Flexible Working) Act 2023.

I regret that there was no potential to discuss a compromise that might work for both parties. Since 6 April 2024, this it has been a legal requirement for employers to consult their employees who have requested flexible working before refusing their request. I made my flexible working request on [date] and was not offered any kind of consultation before your decision to refuse my request on [date]. I would therefore like to appeal your decision so that we may discuss possible flexible working arrangements that work for me and the business.

2. Where your employer has rejected your request for a non-statutory reason:

Use the following paragraph only where your employer gives you a reason for refusal that is not one of the eight permitted business reasons listed above and on [this page](#).

You have refused my request for flexible working because [*state the reason given by the employer to refuse your request*]. This is not one of the eight permitted business reasons to refuse a flexible working request set out in the legislation (s80G Employment Rights Act 1996). I am appealing your refusal in the hope that you will re-consider my request.

3. Where your employer has refused your request on eligibility grounds

Use one of the following paragraphs where your employer refuses your statutory flexible working request because they deem that you are ineligible.

You have refused my request for flexible working because...

(a) you consider that my worker status is as [*a worker / self-employed*], which would make me ineligible to lodge a flexible working request. However, I consider that my worker status is as an employee because [*give reasons. This may include the wording of your contract, whether you are personally obligated to perform your duties, and whether there is a mutuality of obligation between yourself and your employer. Note that, if you are working as an employee under a fixed-term contract, you are still eligible to request flexible working*].

(b) you consider that I did not have 26 weeks' continuous employment with yourselves on the date that I made my request for flexible working. However, I submit that I did have 26 weeks' continuous service when I made the request because [*give reasons, outlining your start date and the date on which you made your flexible working request. Service to an associated employer, or prior to a TUPE transfer will be included, so make this clear if applicable and your employer has overlooked this service.*] you considered that I did not have the requisite level of continuous service with you to make a statutory flexible working request. As of 6 April 2024, this became a day one right for employees such as myself, as the relevant section of the Employment Relations (Flexible Working) Act 2023 came into force.

(c) you contend that I have already made two statutory flexible working requests in the last 12 months. However, [*give details of any previous requests you made, the dates on which you made them and whether they were formal "statutory" requests, or not. You are able to make additional informal requests in this timeframe, so if your employer has rejected your request because you*

verbally brought flexible working up in your appraisal six months ago, then this will not make you ineligible].

Accordingly, I am eligible to make a statutory flexible working request. I invite you to reconsider my application dated [date].

4. Where your employer has refused your request due to technical flaws

Use one of the following paragraphs where your employer refuses your flexible working request because of a technical issue with your initial request. Statutory requests must:

- *Be made in writing.*
- *Be dated.*
- *State that it is made under the statutory procedure.*
- *State whether (and when) any previous applications have been made.*
- *Specify the flexible changes desired.*
- *Specify when the flexible changes will take effect.*

You have refused my request for flexible working because of purported technical defects in my statutory flexible working request. However [*if your request did meet the above formality requirements, give details*]. As you can see, my request for flexible working met the statutory requirements. I invite you to reconsider my application dated [date].

If your request did not meet the above formality requirements, you should re-format your request so that it does and append it to this letter.

You have refused my request for flexible working because of technical defects in my flexible working request. Thank you for pointing these out for me – I was not aware of these requirements beforehand. As my request did not satisfy the requirements for a statutory flexible working request, I have amended my application, which you can find attached to this letter. Given my previous request did not meet the statutory requirements, my letter dated [*today's date*] represents my first statutory flexible working request, which I now invite you to consider.

5. Where your employer has based their refusal on factually incorrect grounds

Use the following paragraphs if your employer bases their refusal on factually incorrect grounds:

You have refused my flexible working request because of [*list, in bullet point form, the factual basis given by your employer for refusing your flexible working request*]. However, this is not the case. In fact, [*go back through each bullet pointed fact and re-state the correct fact that your employer ought to take into account. This may be the number of colleagues in your team that could support you when working flexibly, your historic productivity when working alternate hours, or the "market practice" in your industry for job sharing arrangements. In each case, support your facts with statistics or published research, if appropriate.*].

I therefore ask that you reconsider my application for flexible working. As set out in my original flexible working request, I have applied for flexible working because [*re-state the reason(s) for your request for flexible working and explain again why you believe that it would be reasonable for the employer to accommodate your request. You may want to do this by re-attaching your original flexible working request.*]

6. Where your employer has failed to understand your job role

Use this paragraph where your employer has failed to understand your job role when refusing your flexible working request. This is occasionally because employers will use a standard template to respond to flexible working requests, which may be too generic for your specific circumstances.

You have refused my flexible working request because you do not believe that my role can be done in the flexible arrangement that I requested. I am a [job title] and, up until now I have worked [hours] per week [days worked, i.e., Monday to Friday]. My role requires that I [describe your main duties and responsibilities, in brief here. If you can, give a range of timings on how long each duty takes you on a weekly basis. It may also be useful to show comparative arrangements for colleagues that are working, or examples from competitors in your industry].

Contrary to the assertion in your response letter dated [date], my role can be completed in the flexible manner that I have requested. As such, it appears to me that you have misunderstood my job role when arriving at the decision to refuse my flexible working request. I invite you to reconsider that decision in light of the above explanation of my role.

7. Where your employer has misinterpreted your current and/or requested working hours

Use this paragraph if it is clear from your employer's response that they have misinterpreted your current or proposed hours of work.

You have refused my flexible working request based on incorrect working patterns. You have indicated in your refusal letter that my [existing / proposed] working pattern is [outline the working pattern referenced in the refusal letter]. However, as a matter of fact, my [existing / proposed] working pattern is [outline actual working pattern]. Because of this, the decision you have arrived at is based on false pretences. I therefore invite you to reconsider that decision in light of the above explanation.

8. Where your employer has misunderstood your flexible working request:

You have refused my request for flexible working because of [list the reasons given in your refusal letter, listing them if appropriate]. However, my flexible working request was asking for [a change to hours only, or a change to the times-of-day only, workplace changes only]. There appears to be a disconnect between what I have requested and your justification for refusal.

For clarity [re-state your flexible working request, with specificity as to the number of hours you wish to work per week, your start and finish times each working day, and/or the proposed location of work on those days].

In light of the above information, I invite you to reconsider my flexible working request.

9. Where your employer has refused your request without considering your proposal

Although your employer does not have to provide explanation over and above the prescribed reason for refusal, they do have to follow a proper process. Use this paragraph if it appears that your employer has rejected your request without considering your proposal.

You have refused my request for flexible working for the reasons outlined in your refusal letter dated [date]. However, you have not provided any justification for how you arrived at these reasons. Neither did you hold a meeting with me to discuss my request for flexible working. As such, I do not

get the impression that you have taken the time to properly consider my request for flexible working. I would be grateful for the opportunity to discuss the merits of my flexible working request with you. I believe that flexible working, while benefitting me, will also result in a positive outcome for the team and business as a whole. Please let me know if you are willing to meet with me to properly consider my flexible working request so that we can arrange a mutually agreeable time for a meeting.

10. Where your employer has not responded to your flexible working request in time

Use this paragraph if your employer has not formally responded to your statutory flexible working request within two months of the date of that your formal request was received. This means if you posted a flexible working letter, your employer has two months from the date of delivery. If you have agreed a longer period of consideration with your employer, wait for that time to elapse before using this paragraph. You will need to amend the start of the letter, as in this circumstance there will be no response letter to thank your employer for.

You should have been in receipt of my statutory request for flexible working dated [date]. It is now [today's date]. This exceeds the length of time that you, as my employer, have to notify me, as your employee, of your decision. Before taking this matter further, I would like to give you the opportunity to deal with my flexible working request by way of an appeal. My availability for an appeal hearing in the next two weeks is [availability]. Please let me know a mutually agreeable time and place for you to hear my appeal.

11. Where your employer has failed to deal with your request in a reasonable manner

Delete bullet points as appropriate:

The ACAS Code of Practice suggests that, as my employer, you should have considered my flexible working request by:

- Arranging to talk with me as soon as possible after receiving my request.
- Allowing me to be accompanied by a colleague at our discussion meeting dated [date].
- Holding our discussion meeting dated [date] in a private place.
- Considering my request carefully, by looking at the benefits of the requested changes on me and balancing these against any adverse impact the changes may have on your business.
- Informing me of your decision as soon as possible in writing to avoid confusion over what was decided.
- Allowing me to appeal if you refuse my request.

However, in dealing with my request you failed to [outline failings of your employer to deal with your request in a reasonable manner, going into factual details where possible].

Given that this represents a failure to deal with my request in a reasonable manner, I am taking this opportunity to appeal your decision. I therefore invite you to review the decision making process and reconsider my request for flexible working.

12. Where you believe that your employer has refused your request for a directly discriminatory reason

*Do not use this section lightly. For a refusal to be **directly discriminatory**, your employer must have refused your request because of your protected characteristic (i.e. because you are a mother/father, or because you have a long term health condition). If the decision is justified by your*

employer as "we need employees in your role to work during the school run," then this could be indirectly discriminatory, in which case see section (12) below. You could also use this if you are a father and have requested flexible working and have been refused but woman/ mother' s have been granted FW.

The reason you have given to refuse my flexible working request appears to be directly discriminatory. [*insert specific, factual details. Stay objective. For instance, "During the discussion about my flexible working request, my manager stated that 'fathers should not have caring responsibilities, so you can work during the school run.' This statement made clear that my request for flexible working is being refused because of my sex."*] Direct discrimination in the workplace is prohibited under the Equality Act 2010 and is certainly not a valid reason to deny my flexible working request. Instead of taking this matter further, I would prefer not to cause unnecessary further damage to my working relationship. In spite of [*discriminatory treatment*], I like my job and would like to stay here. As such, I have decided to formally appeal the decision to refuse my flexible working request. I hope that you will hear my appeal so that we can move forward amicably.

13. Where you believe that your employer has refused your request for a reason which may disproportionately impair employees with your protected characteristic

*Use the below paragraphs where you believe the reasons given to refuse your flexible working request are **indirectly discriminatory**. We have included specific examples below, for child-care, sex and disability, however there are a myriad of possible provisions, criteria or practices that may apply.*

**As from 1 January 2024, the Equality Act has made provision so that a claimant wishing to bring an indirect discrimination claim does not need to possess the protected characteristic, provided they can show that they suffered the same disadvantage arising from a discriminatory provision, criterion or practice (PCP) as a person who has the protected characteristic. This has left the door open for men to argue indirect discrimination on the basis of their childcare responsibilities.*

However, caution must be had when making this argument as the law is untested in our courts at this point. Please see the section for child care- man for the suggested wording,

(a) Returning from maternity leave. As a first time mother on maternity leave, I am anxious about my return to work. Before having a child, my working pattern was [*working pattern*]. This arrangement worked well around my lifestyle at the time. But as a mother, I know that my life will not be the same again. I would like to find a working arrangement that allows me to balance my workload with my new responsibilities as a mother.

I had hoped that my flexible working request would facilitate a working arrangement that would allow me to have a thriving career and a fulfilling family life. But your policy of [*policy*] outlined in your refusal letter dated [*date*] has made it clear that the work-life balance that I desire cannot coexist at [*employer*]. It seems to me that this policy may disproportionately impair women returning from maternity leave who hope to balance work with their family life.

(b) Childcare. I am afraid that I would not be able to continue working at [*employer*] unless my flexible working request is granted. My son needs collecting from [*childcare*] at 3:30pm on Thursdays and Fridays, and there is literally no-one else who can pick him up. If there was another solution, I would have suggested it, but I simply cannot make it work.

I fear that your response could be indirectly discriminatory, as it disproportionately impacts women as caregivers, and it is putting me at a serious disadvantage. Please could I ask that you re-

consider my application for flexible working? I would be willing to start off as a trial period so that I can prove that I can still get my job done in the hours I have suggested.

***Childcare: man** - I am the primary carer of my child. I will not be able to continue working at [employer] unless my flexible working request is granted. My child needs collecting from [childcare] at (time)pm on Thursdays and Fridays, and there is literally no-one else who can pick him/ her up. If there was another solution, I would have suggested it, but I simply cannot make it work.

I fear that your response could be indirectly discriminatory, as it disproportionately impacts me as a caregiver, and it is putting me at a serious disadvantage. Please could I ask that you re-consider my application for flexible working? I would be willing to start off as a trial period so that I can prove that I can still get my job done in the hours I have suggested.

Childcare alternate. I am afraid that I would not be able to continue working at [employer] unless my flexible working request is granted. As things stand, I am completely reliant on my mother-in-law to look after my daughter on Mondays and Tuesdays. Her circumstances have recently changed, meaning she can no longer support us on Mondays.

Unless I can work from home on Mondays and take time off throughout the day to care for my daughter, I cannot continue working. Your rigid approach to my flexible working application is making me choose between my career and my family. I strongly believe that I am capable of continuing to excel at both, which is why I would like you to reconsider my request for flexible working.

(d) **Disability.** You have refused my request for flexible working because of our workplace policy of being present in the office a minimum of three days a week. As someone who juggles caring responsibilities with [long term health condition], I require greater flexibility than that. Some weeks, attending the workplace on all five days will not be a problem. On others, it is tricky for me to leave the house. By rigidly implementing this three-day-a-week policy, you are disadvantaging me and other people like me. Given this unfair disadvantage, I would like to appeal the decision to refuse my flexible working request.

(e) **Caring for someone with a disability.** I am afraid I cannot accept your refusal of my flexible working request. While I appreciate the benefits of being present in the office in certain circumstances, I believe that my unique situation warrants specific consideration.

As explained in my initial request, the reason I am requesting flexible working is to fit my work around caring responsibilities for [dependent], who is living with [disability]. While I am proud of everything I have accomplished so far at [employer], my situation has become increasingly more difficult in recent months because of [insert details if appropriate]. I am not sure how anyone in my situation would be able to continue working [in my current working arrangement] as you have suggested I should do by refusing my request.

Despite this, I believe that I can continue to do a good job as [job title] if I am given the opportunity to work flexibly. A new working arrangement will enable me to [insert details of the benefits to your caregiving].

14. Where your employer has legitimately rejected your request, but you want to suggest an alternative

I understand that the reasons for your refusal were legitimate, however I would still like to appeal this decision so that I may suggest some alternative arrangements that might be more palatable. I have considered the following alternative, which addresses the concerns that you have raised in

your refusal *[if you can, explain how you have understood their concerns e.g. inability to re-organise work amongst existing staff. You can add arguments here you have not used before.*

If for example, the employer says the role is a “5 day” role, suggest a job share for the days you aren’t going to be working. Job shares can be hugely positive for all parties involved. The employee gets to work flexibly, the employer can make sure there is always someone (e.g. during periods of annual leave) to cover the work – the employees in the job share could agree to not take annual leave at the same time. Employers often worry about additional costs (recruitment and training) but you could offer to train the job share partner and there are free part-time recruitment websites to advertise on.

Another alternative to a job share, for example if moving from a full-time role to a 4 day a week role where a job share might not be practical, is to suggest another more junior member of the team “act up” on the day you aren’t in the office. This again has positives for everyone involved – a more junior member of the team is training and stepping up to a more senior role but just one day a week, so developmentally, good for them. You get to work your 4-day a week pattern, the employer has full cover and no additional costs.

You can add if you are happy to check emails or work remotely from home - the more flexible you can be, the more flexible the employer is likely to be. There are many other alternatives you could suggest based on your individual situation – have a think about what else could work for you and your employer.

If you can, explain why you believe none of the eight statutory grounds for an employer to refuse a flexible working request apply to your proposal. For example, you may believe that your request means that there would be no additional costs to the organisation because the way you are proposing to work under the flexible working arrangement (such as a change of hours rather than going part time) would not change the costs of employment for your employer].

15. Where you would like to suggest a trial period

As part of my appeal, I would like to propose a trial period so that I can prove how beneficial a flexible working arrangement could be for both me and the business. If you agree to a trial period, we can use the time to monitor what impact, if any, me working flexibly will have on my performance, my colleagues and the business as a whole.

I would like to suggest the following as a trial period:

Trial Period:	One month
Start Date:	A month from today's date
Flexible Working Arrangement:	Adjusted hours: 9:30am – 3:30pm and 7:30pm – 9:30pm
Review Date:	After two weeks and at the end of the trial period
Review Criteria:	Colleague feedback, Client feedback & Manager appraisal

As your employer is not required to agree to a trial period, it is up to you to agree the terms of a trial period with them. The above is a simple example.

You could ask to try to ask for the exact flexible working you have requested for a period of a month, for instance. Alternatively, you could agree to a trial period that lasts three months, but where you alternate between flexible and non-flexible weeks. If you think your employer is particularly rigid, including a compromise like this, or keeping the trial short and sweet (you could try for a week or two) in the first instance. If your employer is more inclined to accept, you could be a bit more ambitious by asking to trial the exact arrangement you would like.

While a longer trial period will enable you and your employer to get a better picture of the long-term implications of the change, a shorter period could make your employer more inclined to accept it, especially if they are reluctant to offer you flexible working in the first place.

Whatever you agree, make sure that there is an agreed review process, either mid-way through the trial or at the end. Document your progress (and try to get colleagues to offer feedback on the arrangement) so that your case is as complete as possible.

It can be useful to include a list of objective criteria to assess the success of your flexible working and a review mechanism in your appeal letter. This will demonstrate that you have given real thought to the trial period, and that you are going out of your way to make a trial period as easy for your employer to accept as possible.

Non-statutory & Informal Flexible Working Request Appeal Letter

[Your name]

[Your address]

[Name and address of employer]

[Date]

For the attention of [Name of your manager]

Flexible working request: appeal of decision

Thank you for your response dated [date of response letter] to my flexible working request dated [date of request]. I am disappointed my request for flexible working has been rejected. I am writing to appeal this decision for the reason(s) I explain below.

Insert the relevant paragraphs here, depending on the reasons given for refusing your flexible working request, filling in personal details where necessary. As your request was non-statutory, you may have wanted to keep it as informal as possible. Consider amending the structure to an email if that is more appropriate to your circumstances. The following paragraphs from the statutory requests (above) may still be applicable:

- 4. Factually incorrect grounds
- 5. Failed to understand your role
- 6. Misinterpreted your hours
- 7. Misunderstood your request
- 8. Has not considered your request
- 11. Direct discrimination
- 12. Indirect discrimination

I am open to any alternative solutions you may have which might work for both of us.

I am also happy to attend a meeting with you to discuss my request in more detail and address any concerns or questions you may have.

I look forward to hearing from you.

Yours sincerely,

[Your signature]

[Your name]