

# PORTFIELD SCHOOL & SATELLITE CENTRES



## POLICY DOCUMENT FOR MANAGING STAFF FLEXIBLE WORKING IN SCHOOLS – Guidance for Governing Bodies and Employees



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Welsh Network of Healthy School Schemes



Cynlluniau Ysgolion Iach - Rhywydwaith Cymru



Portfield School adopts the LEA guidance on

**MANAGING STAFF FLEXIBLE WORKING IN SCHOOLS  
– Guidance for Governing Bodies and Employees Policy**

This policy will be reviewed annually.

Signed ..... (Chair of Governors)

Signed .....(Headteacher)

Date .....

**Pembrokeshire County Council  
Cyngor Sir Penfro**



EDUCATION SERVICES

## **Managing Staff in Schools**

**FLEXIBLE WORKING IN SCHOOLS -**

**Guidance for Governing Bodies and  
Employees**

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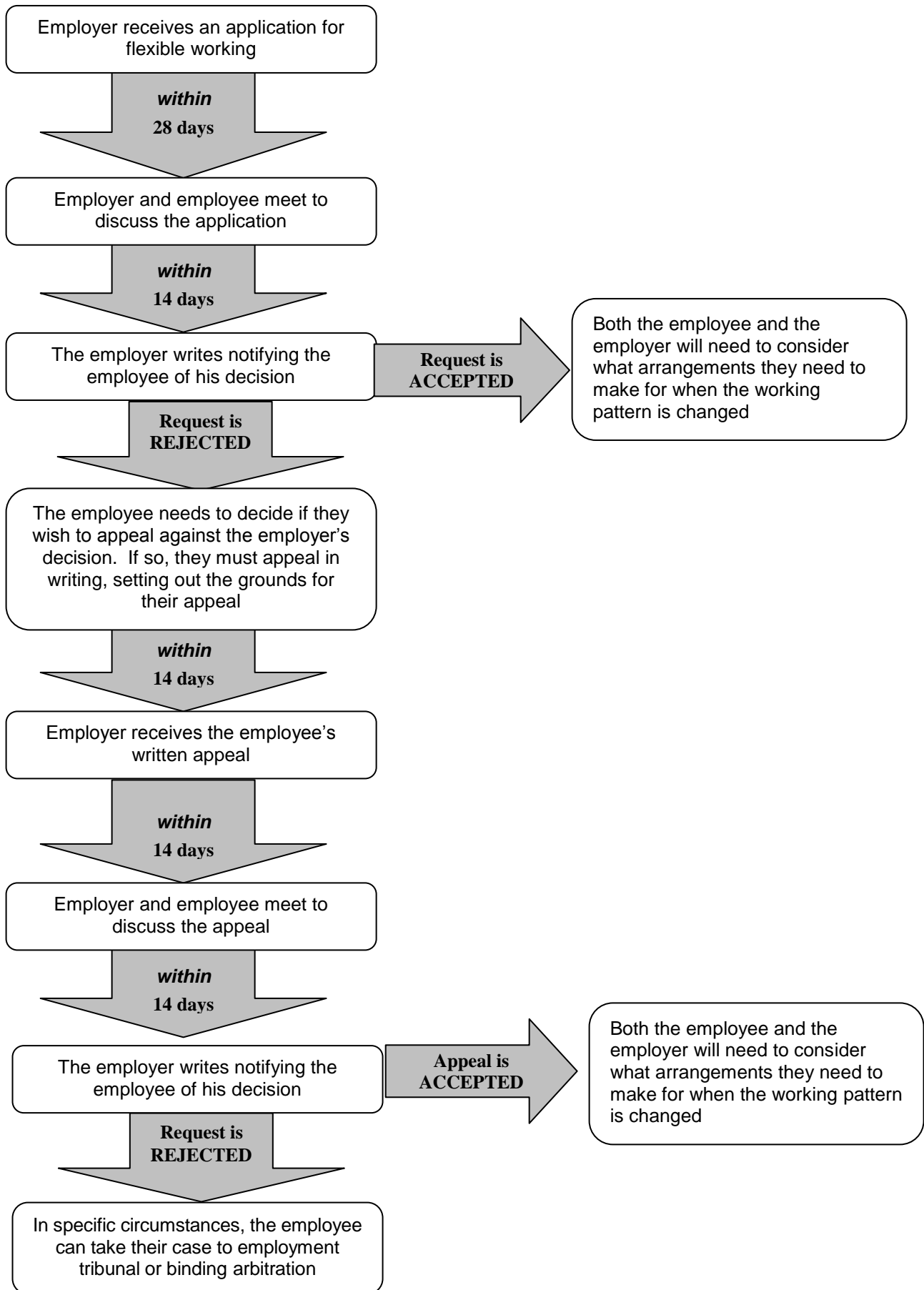
## **Employee and Management Guidelines on Flexible Working**

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## HOW DOES THE PROCESS WORK?



## 1. Introduction

Flexible working opportunities benefit everyone: employers, employees and their families.

Pembrokeshire County Council is committed to being an employer that supports Work Life Balance and recommends that governing bodies support and adopt these principles. We recognize that everyone has a life outside work and that, at some point, most people need help from their employer to balance their work and other life commitments.

Pembrokeshire County Council knows that it makes good business sense to provide flexible working opportunities for our employees. We recognise that flexible working arrangements enable us: to retain skilled employees and reduce recruitment costs; to further raise employee morale and decrease absenteeism; and to react to changing market conditions more effectively. We are open to considering requests to work an alternative working pattern providing there is no detrimental effect on the curriculum needs of the school and these guidelines establish a procedure for handling requests. For individuals, the opportunity to work flexibly can greatly improve their ability to balance home and work responsibilities.

Anyone thinking about changing their work pattern should speak to their line manager/head teacher as early as possible in order to explore what opportunities are available. And no more so than parents of young and disabled children who can face particular challenges in juggling childcare with work.

These guidelines detail the rights and responsibilities of all parties. A package of forms based on best practice accompanies this guidance to aid the employee in making their application and the line manager/head teacher when considering their request.

The statutory right to request flexible working for parents came into force on 6<sup>th</sup> April 2003, for carers of adults on 6<sup>th</sup> April 2007, and was extended to parents of children under 16 or under with effect from 6<sup>th</sup> April 2009. The Government recently been announced its intention to extend this right to all parents of children under 18 from April 2011. Pembrokeshire County Council has extended this right to all employees in recognition of the caring commitments and home life responsibilities of all employees at different stages of their lives and we recommend that Governing Bodies support this approach.

In order to assist governors in meeting the timescales set out above, we suggest that the governing body delegate this to the head teacher and chair of governors to consider and agree or otherwise. Any appeals would need to be heard by the appeals panel of the governing body.

The initial onus is on the employee to prepare a carefully thought-out application well in advance of when they would like the desired working pattern to take effect. The head teacher then follows a set procedure to help ensure a request is considered seriously, which seeks to facilitate discussion and enables both parties to gain a clear understanding of each other's thinking prior to referring the

matter to the governing body for the final decision. An employer can refuse a request where there is a recognised business ground for doing so. The basic rights and responsibilities under this legislation are set out below.

## **RIGHTS AND RESPONSIBILITIES**

### **Employees' rights**

- To apply to work flexibly.
- To have their application considered properly in accordance with the set procedure and refused where there is a clear business ground.
- To have a work colleague or recognised union representative when meeting the employer to discuss the application.
- Where an application is refused to have a written explanation explaining why.
- To appeal against the employer's decision to refuse an application.
- To take a complaint to an employment tribunal in certain circumstances where there are statutory rights e.g. carers of children under 16 years or disabled children under 18.

### **Employees' responsibilities and best practice**

- To provide a carefully thought-out application.
- To ensure they have provided all the necessary information.
- To ensure the application is made well in advance of when they want it to take effect.
- To arrive at meetings on time and to be prepared to discuss their application in an open and constructive manner.
- To be prepared to be flexible themselves in order to reach an agreement with the employer.  
To accept responsibility for making part time arrangements work, particularly in relation to shared responsibilities (e.g. reporting, parents evenings, planning, curriculum coverage, staff development, departmental meetings, out-of-lesson contact with pupils).

### **Employers' rights (i.e. Governing Body's in this case)**

- To reject an application when the desired working pattern cannot be accommodated within the needs of the business. The needs of learners are paramount, particularly in relation to continuity between lessons and within key stages. Part time working must fit in with the timetable needs of the school and is not a primary driver in timetable construction.
- To seek the employee's agreement to extend timescales where it is appropriate.
- To consider an application withdrawn in certain circumstances.

## **Employers' (Governing Body's) responsibilities and best practice**

- To consider requests properly in accordance with the set procedure.
- To ensure they strictly adhere to the time limits contained within the procedure.
- To provide the employee with appropriate support and information during the course of the application.
- In declining a request where there is a recognised business ground to explain to the employee in writing why it applies.
- To ensure that any variation with the procedure is agreed in advance with the employee and recorded in writing.

## **2. Eligibility**

To make an application under the **statutory right** the employee will have to meet certain criteria. This section explains those criteria and the types of flexible working for which an employee might apply.

Pembrokeshire County Council has **extended the right to request flexible working to all our employees**, however, those employees who do not meet the statutory criteria will not have the same rights to external complaint either through arbitration or Employment Tribunal.

### **ELIGIBILITY CHECKLIST: STATUTORY**

**To meet the statutory criteria an employee must:**

- **Have a child aged under sixteen, or under eighteen where disabled.**
- **Make the request no later than two weeks before the child's appropriate birthday.**
- **Have responsibility for the upbringing of the child and be making the application to enable them to care for the child.**
- **Be either: the mother, father, adopter, guardian or foster parent of the child; or married to or the partner of the child's mother, father, adopter, guardian or foster parent.**
- **Have worked for their employer continuously for 26 weeks at the date the application is made.**
- **Not have made another application to work flexibly under the right during the past 12 months.**

### **Under what circumstances can an application be made?**

An application can only be made in order to help the employee to care for the child. This may cover a range of circumstances. For example, it may enable the employee to spend more time with their children or help with dropping their child off at school.

### **Who can make requests under the right?**

Both mothers and fathers, whether they are the biological parents or legal guardians, can make applications, as can adoptive and foster parents. Spouses or partners of these employees are also eligible, including spouses or partners of the same sex as long as they have or expect to have responsibility for the



upbringing of the child.

## **DEFINITIONS**

- **‘Adopter’ is someone who has been matched with the child for adoption;**
- **“Employee’ means an individual who has entered into or works under a contract of employment;**
- **‘Disabled child’ means a child who is entitled to a disability living allowance within the meaning of Section 71 of the Social Security Contributions and Benefits Act 1992;**
- **‘Employer’ means the person by whom an employee is employed;**
- **‘Foster parent’ means a foster parent within the meaning of Regulation 2(1) of the Fostering Servicing Regulations 2002 or Section 2(1) of the Fostering of Children (Scotland) Regulations 1996;**
- **‘Guardian’ means a person appointed as a guardian under Section 5 of the Children Act 1989 or Sections 7 and 11 of the Children (Scotland) Act 1995;**
- **‘Partner’ in relation to a child’s mother, father, adopter, guardian or foster parent, means a person (whether of different sex or the same sex) who lives with the child and the mother, father, adopter, guardian or foster parent in an enduring family relationship but is not a relative.**

### **What are the age limits of the child?**

The employee’s child must be under sixteen, or under eighteen where the child is disabled, for the employee to be eligible to make an application. The application must be submitted no later than two weeks before the child’s sixteenth or eighteenth birthday, as appropriate.

### **Which employees are covered?**

The parent will have to be an employee and have worked for their employer continuously for 26 weeks at the date the application is made.

### **How often can an application be made?**

One application a year can be made under the right. Each year runs from the date when the application was made.

### **What kind of changes can be applied for?**

There is scope to apply for a wide variety of different types of working pattern. Eligible employees can request to:

- change the hours they work;
- change the times when they are required to work; or
- work from home (whether for all or part of the week).

A request may be a change to their hours in order to better fit their work with childcare requirements. Flexible working actually incorporates a wide variety of working practices. A flexible working arrangement can be any working pattern other than the normal working pattern. Most people are familiar with working part-time for reduced pay or working different shift patterns. But other ways of working that employees may consider are outlined on the next page.

## **WAYS OF WORKING**

### **Many of the following would not be applicable for school based staff**

- *Annualised hours* describes working time organised on the basis of the number of hours to be worked over a year rather than a week; it is usually used to fit in with peaks and troughs of work. Pay will depend on the hours worked each pay period.
- *Compressed hours* allows individuals to work their total number of agreed hours over a shorter period. For example, employees might work their full weekly hours over four rather than five days or nine longer days per fortnight. They would be paid for a fulltime job but would not receive overtime payments for the agreed extra hours they work in any one day.
- *Flexitime* The Authority already gives some employees choice about their actual working hours, outside agreed core times.
- *Homeworking* doesn't have to be on a full-time basis and it may suit an employee to divide their time between home and office. What individuals are paid for depends on the hours they work. Employers are required to carry out a risk assessment of the activities undertaken by homeworkers, identifying any hazards and deciding whether enough steps have been taken to prevent harm to them or anyone else who may be affected by their work.
- *Job-sharing* typically involves two people employed on a part-time basis, but working together to cover a full-time post. Both receive pay for the hours they work. [For further guidance on this matter please refer to the Managing Staff in Schools 16. Job Share Policy].
- *Shift working* gives employers the scope to have their business open for longer periods than an eight-hour day. Agreed flexible working arrangements may mean that a shift premium is not needed.
- *Staggered hours* allows employees to start and finish their day at different times.
- *Term-time working* allows employees to take unpaid leave of absence during the school holidays.

- *Voluntary reduced hours* allows an employee to work reduced hours for a defined period on a voluntary basis.

### 3. Making an application

The main opportunity for the employee to set out their desired working pattern and arguments why it can be implemented is through their application when making a request. The initial onus is therefore on the employee to provide a written application to their line manager/head teacher well in advance of when the change is to take effect. This section explains the information that must be included for an application to be valid and the issues that the employee will want to consider in preparing their application. Where a statutory right is being triggered then the appropriate questions have to be completed. In all cases the business case must be detailed.

**Form FW (A): Flexible Working Application Form**, which accompanies these guidelines, may be used to make a request. Its use, however, is not mandatory. An application can be made in whatever form is most suitable to the employee. It may be through a letter to the line manager/head teacher, or via e-mail. **Form A**, though, will help the employee to ensure that all the necessary information is provided and avoids any delay. Irrespective of how an application is made, the following table lists all the points that must be covered in the application in order for it to be valid and for it to be considered by the line manager:

#### APPLICATION CHECKLIST

An application under the right must:

- Be in writing (whether on paper, e-mail or fax).
- State whether the application is being made under the statutory right to request a flexible working pattern OR;
- State whether the application is being made under Pembrokeshire County Council's extension of the statutory right
- Explain what effect, if any, the employee thinks the proposed change would have on the employer and how, in their opinion, any such effect might be dealt with.
- Specify the flexible working pattern applied for.
- State the date on which it is proposed the change should become effective.
- State whether a previous application has been made to the employer and, if so when it was made.
- Be dated.

## **What information should an application contain?**

The level of detail required will depend on the desired changes to the existing working pattern. In all cases it is in the employee's interest to be as clear and explicit as possible.

The written application must state the date when the employee would like the new working pattern to start. The proposed date should allow time for the application to be considered and implemented. There is no set time but an employee can expect it to take around **fourteen weeks** or longer if a problem arises. They must also state if and when any previous application was made.

The application provides the employee with the opportunity to set out the reasons why their preferred working pattern is compatible with the needs of the business, as far as they are able to tell. It must therefore provide an explanation of what effect, if any, the employee thinks the proposed change would have on the service, the work group and how they feel any such effect might be dealt with.

This does not mean that the employee is expected to know every factor that might influence the employer's decision. It simply means that they should show they have considered the factors that they are aware of that are likely to influence their employers decision. Evidence shows that applications for flexible working patterns succeed where they are soundly based on the business needs of the employer.

## **Will the change of working pattern be permanent?**

Any request that is made and accepted will be a **permanent** change to the employee's contractual terms and conditions unless otherwise agreed between both parties that it is a temporary variation of contract. Any temporary variations will not be permitted beyond 12 months.

## **Points to bear in mind when making an application**

The points below provide suggestions for employees of things to bear in mind when making an application.

## **HOW TO HELP YOUR EMPLOYER CONSIDER YOUR REQUEST**

- A new working pattern will be a **permanent** change. So think carefully about your request as you have no right to revert back to your former hours of work.
- Think about the date you when you would like your new working pattern to begin. Be aware that the process can take up to 14 weeks to complete and sometimes longer where a problem arises.
- Use Form FW (A) accompanying these guidelines to make your application if you are unsure about covering all the information.

- Remember, the more notice you provide your employer, the more likely they will be able to implement the change when it suits you. So once the application is complete immediately submit it to your employer.
- Remember, if you request a flexible working pattern that will result in you working fewer hours, your pay will reduce too.
- It is to your advantage to provide as much detail as possible about the pattern you would like to work.
- Take time to consider how your colleagues will manage if your working pattern is changed.
- Think about what affect changing your working pattern will have on your job. You should aim to show in your application that your plans will not harm the service and may in fact enhance it.
- Think about how any potential problems your plans may present to your employer could be overcome and ensure that you include these in your application.
- If you are due to go on maternity leave think carefully about when to make your request. You might wish to mention to your employer before you take leave that you are interested in applying to work flexibly on your return. Bear in mind that you may need to attend meetings with your employer so that your request can be properly considered. If you want the changes to start on your return from maternity leave, you should make your application in good time.
- Be aware that schools may not be able to guarantee the same pattern of part-time working due to changes in the timetable for the subject taught and therefore a degree of flexibility may be required to make the timetable work.

#### **4. Considering an application**

The right places a legal duty on employers to consider all applications and establish whether the desired work pattern can be accommodated within the needs of the business. This is demonstrated through following a set procedure. A flowchart on the first page of these guidelines summarises the procedures. This section explains the first step in the process, which is to arrange a meeting to discuss the request with the employee.

In reaching a decision, Headteachers should consider the following factors. In the case of support staff applications not all of these factors will be relevant.

## **SUMMARY**

### **The meeting**

- An employer must hold a meeting to consider the request within 28 days after the date an application is received.
- An employee can, if they wish, have a work colleague or recognised union representative to accompany them to the meeting.
- The employer must write to the employee informing them of their decision within 14 days after the date of the meeting.
- Line Managers at P.O. Grade and above to deal, subject to the appropriate Head of Service being made aware of proposed arrangements and having endorsed them.
- Governing Bodies need to delegate this process to the head teacher who will report back to the governors at the next meeting of the governors.

### **The companion**

- An employee has the right to bring a companion to the meeting.
- The companion must be a worker employed by the same employer or a recognised union representative.
- The companion can address the meeting or confer with the employee during it.
- The companion is not allowed to answer questions on the employee's behalf.
- If the companion is unable to attend the meeting, the employee should re-arrange the meeting for a date within seven days of the originally proposed time, ensuring the new time is convenient to all parties; or, consider an alternative companion.

### **How should an application be submitted and received?**

An application will be considered to have been made on the day that it was received by the line manager/head teacher. For applications sent by e-mail or fax this is taken to be the day of transmission. For applications sent by post it means the day on which it would have been delivered in the ordinary course of post, unless shown to be otherwise.

### **How should an application be acknowledged?**

It is best practice for the employer to acknowledge receipt of the request. An

acknowledgement slip is included on the bottom of Form **FW (A)** which allows an employer to readily confirm the date on which the application was made. This is particularly important where there has been a delay in the application reaching the employer.

### **What happens if the application is incomplete?**

If an employee fails to provide all the required information as set out in **Section 3**, the employer should inform the employee what they have omitted and ask them to re-submit the application when complete. The employer should also inform the employee that they are not obliged to consider the application until it is complete and re-submitted.

### **What happens at the meeting?**

Experience shows that the best way for both parties to understand each other's position and identify a solution that suits them both is to hold a face-to-face meeting to discuss the request. The legislation requires the employer to arrange a meeting with the employee within 28 days after the application has been made. The meeting will provide both parties with the opportunity to discuss the desired work pattern in depth and consider how it might be accommodated. Both the employer and the employee should themselves be prepared to be flexible. If the original working pattern cannot be accommodated, the meeting also provides an opportunity to see if an alternative working arrangement may be appropriate.

### **Trial Periods**

It may be in the employer and employee's interests to agree that any new working pattern will take place for an agreed trial period in order to see how it would suit them both, before agreeing to a permanent change.

## **HOW TO ENSURE YOU GET THE MOST FROM THE MEETING**

### **Line Manager**

#### **You might want to:**

- Make a list or draft an agenda of the issues you want to discuss at the meeting, e.g. if you are already aware that the request can be granted, you may want to discuss a suitable start date before formally accepting the request.
- Inform your employee of anyone you have asked to join the meeting.
- Ask your other workers if they would want to cover any extra hours that may be created as a result of granting the request.
- Speak to your link HR officer so that you are clear about your options.

- Familiarise yourself with this guidance and the different types of flexible working.

## **Employee**

### **You should:**

- Be prepared to expand on any points within your application.
- Prepare to be flexible. Your line manager may ask if there are any other working patterns you would be willing to consider or if you would consider another start date or a trial period.
- If you are taking a companion along, make sure they are fully briefed on your request beforehand, provide them with a copy of your application, and inform your employer that a companion will be present. This will save time during the meeting.
- Familiarise yourself with this guidance and other sources of information on flexible working before the meeting.

The head teacher/line manager must ensure that the meeting is held at an appropriate time and place that is convenient to both parties. In most cases, this will probably be the usual place of work, but again, both parties should be prepared to be flexible about this

If it is difficult to arrange a meeting within 28 days after the application was made at a time and place convenient to all parties then the head teacher/line manager should seek the employee's agreement to extend the period. This is explained in detail in Section 6. Failure to hold a meeting within the 28-day period or any extension, without the employee's agreement, will be a breach of the procedure **(see Section 7 for more detail)**.

### **Can an employee bring a companion to the meeting?**

The right allows an employee to be accompanied at the meeting by one companion if they feel this would help them. The companion must be a worker employed by the same employer. This can include a work colleague or a trade union representative who works at any other premises which forms part of the business.

The role of the companion is to support the employee. For example, if the employee has not attended many meetings before, it is possible that they may be nervous. The presence of a colleague can therefore make the meeting more productive for the employer and the employee.

The companion is able to address the meeting, and to confer with the employee during it, but they may not answer questions for the employee. The employee should contact their companion as soon as they know the date of the meeting to ensure they are free. If the companion is unable to make the initial meeting, the



employee must seek to rearrange the meeting for a time convenient to themselves, the employer and their companion. It should take place within seven days of the date of the initially proposed meeting. If this cannot be achieved, the employee should consider an alternative companion who can attend the meeting.

An employer must allow any of their workers to take time off during work hours to act as a companion. The employer must also continue to pay them for this time.

### **What happens if the employee fails to attend this meeting?**

An employee who fails to attend the meeting without notification is responsible for contacting their head teacher/line manager as soon as possible to explain their absence, and to allow the head teacher/line manager to rearrange the meeting at the next mutually convenient time. A head teacher/ line manager whose employee fails to attend the meeting more than once and does not provide a reasonable explanation may treat the application as having been withdrawn. In such circumstances, the head teacher/line manager should write to the employee confirming that the application was now considered withdrawn. For further information about when an application may be taken as withdrawn see Section 6.

## **5. Considering a request – reaching a decision**

Once the head teacher/line manager and the employee have discussed the request, the head teacher/line manager must notify the employee of the decision in writing. Notification must take place within 14 days following the date of the meeting. This section describes the steps that need to be taken whether the application has been accepted, remains unresolved or has been rejected. An application may be refused where the employer has a clear business reason for doing so. Acceptable business reasons are listed in this section.

### **SUMMARY**

- **The employer must inform the employee of their decision in writing within 14 days after the day of the meeting.**

**If a request is accepted, the notification must:**

- **Include a description of the new working pattern.**
- **State the date from which the new working pattern is to take effect, or trial period.**
- **Be dated.**

**If a request is rejected, the notification must:**

- **State the business ground(s) for refusing the application.**
- **Provide a sufficient explanation as to why the business ground(s) for refusal applies in the circumstances.**
- **Provide details of the employee's right to appeal.**

- **Be dated.**

### **How should an application be accepted?**

When accepting a request the line manager must write to the employee:

- detailing the new working pattern;
- stating the date on which it will start, and
- ensuring the notice is dated.

**Form FW (B): Application acceptance form** can be used to confirm a new working pattern. The agreed new working pattern will be a permanent change to the employee's terms and conditions of employment, unless agreed otherwise. Where a trial period or time limited period has been agreed this should also be detailed in the written notice. When implementing the new working pattern other factors that the line manager should bear in mind are detailed below.

### **HOW TO ACTION AN ACCEPTED REQUEST**

- **Inform your link HR officer of the new working pattern.**
- **Check to see if the employee's pay needs amending.**
- **Check if all health and safety requirements have been satisfied.**
- **Consider who else you need to inform, including other colleagues.**
- **Issue a written statement within the first half term of the academic year detailing directed time (where applicable) and INSET days to be worked.**

### **What happens if the employer needs more time to reach? a final decision?**

If the head teacher/line manager needs more time to come to a decision, they must obtain the agreement of their employee for an extension to the 14 days in which to inform them of the decision following the meeting. In these circumstances the proposal for an extension is likely to be in the employee's interests and the employee should be open to such requests. For example, following the meeting, the employer is willing to agree to the request in principle, but needs more time to look into certain aspects of the proposed new working pattern. This could occur where an alternative working pattern was identified during the meeting. In such circumstances, the line manager will need to agree with the employee an extension of the time limit to deal with the request. This is covered more fully in Section 6.

### **How should an application be declined?**

There will always be circumstances where, due to the needs of the business, the employer feels they are unable to accept a request. **Form FW (C): Application rejection form** is provided for refusing the request. In all such circumstances, the employer must in writing:

- state the business ground(s) why the request cannot be accepted;
- provide an explanation of why the business reasons apply in the circumstances;
- set out the appeal procedure; and
- ensure the written notice is dated.

## **What is a business ground?**

An application can be refused where there is a clear business reason. The business ground(s) for refusing an application must be from one of those listed below.

### **BUSINESS GROUNDS FOR REFUSING A REQUEST**

- **Burden of additional costs.**
- **Detrimental effect on ability to meet customer demand.**
- **Inability to reorganise work among existing employees.**
- **Inability to recruit additional employees.**
- **Detrimental impact on quality.**
- **Detrimental impact on performance.**
- **Insufficiency of work during the periods the employee proposes to work.**
- **Planned structural changes.**

### **How should the refusal be explained?**

In addition to providing a specific business ground the employer must include an explanation about why the business ground applies in the circumstances. Experience shows that an employee who understands why a business reason is relevant will accept the outcome and be satisfied that their application has been considered seriously, despite being disappointed that their application has been refused. It also shows that the reverse is true, particularly if the explanation is not sufficient for understanding.

The explanation should include the key facts about why the business ground applies. These should be accurate and clearly relevant to the business ground. To prevent any uncertainty, the explanation should avoid the use of unfamiliar jargon and should be written in plain English.

An explanation of around two paragraphs will usually be sufficient, although the actual length of explanation necessary to demonstrate why the business ground applies will differ depending on each individual case. It is not a requirement for the employer to have to provide a lengthy and complex explanation looking to cover each argument in fine detail, nor should the employee expect this. The aim is for the line manager to explain to the employee, in terms that are relevant, why the requested working pattern cannot be accepted as a result of the business ground applying in the circumstances. If the argument does not look convincing to the employer it is unlikely to look convincing to the applicant. This is a vital stage in the constructive dialogue that maintains a good relationship between

both parties.

## **HOW TO ENSURE THAT THE EXPLANATION ACCOMPANYING THE BUSINESS GROUNDS IS SUFFICIENT**

**Double check that the explanation:**

- **Says why the business ground is relevant and why the request cannot be accepted.**
- **Keeps to plain English and avoids the use of unfamiliar jargon.**
- **Includes relevant and accurate facts.**
- **Is not overly complex or unnecessarily long.**

Any facts quoted in the explanation must be accurate. It is not a necessity for the line manager to provide the detail in the explanation, but they should ensure that they are able to back up any facts should they be subsequently disputed. A decision based on incorrect facts to reject an application would provide an employee applying under the statutory right with a basis to make a complaint to an employment tribunal.

A tribunal does not have the power to question the employer's business reasons for declining a request, but they will want to see evidence of any facts relied upon to reject the application and that the employer has provided the employee with sufficient explanation as to why the business ground applies to the application.

### **What happens at the appeal meeting?**

It will never be possible for a head teacher/line manager to agree to a new working pattern in every circumstance due to the business needs of the organisation. In such circumstances, then reasoning why the request cannot be accepted should be clear to the employee from the notice of the refusal, which must include the business reason and an explanation. But there will be circumstances where the employee may believe that their request has not been properly considered and may want to appeal. The appeal procedure is summarised below.

### **APPEALING THE DECISION:**

- **An employee has 14 days to appeal in writing after the date of notification of the employer's decision.**
- **If an appeal is made, the line manager must arrange an appeal meeting to take place within 14 days after receiving notice of the appeal.**
- **The employee can be accompanied.**
- **The line manager must inform the employee of the outcome of the appeal in writing within 14 days after the date of the meeting.**

An employee must make their appeal in writing within 14 days after the date they

receive written notice that their request has been rejected. When appealing against a refused request an employee will have to set out the grounds for making the appeal and ensure that it is dated.

There are no constraints on the grounds under which an employee can appeal. It may be that they wish to bring to attention something the line manager may not have been aware of when they rejected the application, e.g. that another member of staff is now willing to cover the hours the applicant no longer wishes to work. Or it may be to challenge a fact the employer has quoted to explain why the business reason applies.

The head teacher/line manager must arrange the appeal meeting within 14 days after receiving notification that the employee wishes to appeal. The employee can be accompanied by one companion. This is on the same basis as the meeting to discuss the request and detailed in Section 4. The appeal should be heard by the Appeals Committee of the Governing Body.

The committee hearing the appeal must inform the employee of the outcome of the appeal in writing within 14 days after the date of the meeting. **Form FW (E): Appeal Reply Form** has been provided for this purpose.

If the appeal is upheld the written decision must:

- include a description of the new working pattern;
- state the date from which the new working pattern is to take effect; and
- be dated.

If the appeal is dismissed the written decision must:

- state the grounds for the decision. These will be appropriate to the employee's own grounds for making the appeal;
- provide an explanation as to why the grounds for refusal apply in the circumstances. The same principles apply as to what is a sufficient level of explanation at appeal as the amount of appeal that should be given following the initial decision; and
- be dated.

A written notice of the appeal outcome constitutes the employer's final decision and is effectively the end of the formal procedure within the workplace.

### **What happens when the appeal meeting is missed?**

The circumstance where the employee misses the appeal meeting should be handled in the same way as for an employee who misses the meeting to discuss the application, as described in Section 4. An employee who fails to attend the meeting without notification should contact the employer as soon as possible to

explain their absence. The employer should rearrange the meeting at the next mutually convenient time. An employer whose employee fails to attend a meeting more than once and does not provide a reasonable explanation may treat the application as having been withdrawn. In such circumstances, the employer should write to the employee confirming that the application was now considered withdrawn. For further information about when an application may be taken as withdrawn see Section 6.

## **6. Exception to the procedure and withdrawals**

In the majority of cases, requests for flexible working will follow the procedure as laid out in the previous sections. However, there will be occasions where it is necessary to deviate from this to help reach a suitable outcome. This section outlines the potential exceptions to the procedure and when an application may be taken as withdrawn. In all circumstances it is essential that a written record is made.

### ***Extension of time limits***

There are two circumstances where the time limits as laid out in previous sections can be extended:

#### **➤ Through agreement by the line manager and the employee**

There will be exceptional occasions when it is not possible to complete a particular part of the procedure within the specified time limit. For example, it might be that the head teacher/ line manager requires extra time to speak to another employee, who is on holiday, about whether they could work the hours left uncovered by the employee's requested working pattern. Or the employee themselves may be going on leave and as such will not be able to attend a meeting within the time limit. Such extensions of time limits can only take place if they are agreed by both the line manager and the employee. The employer must make a written record of the agreement. **Form (FW) F: Extension of Time Limit** can be used for this purpose.

The written record of the agreement must:

- Specify what period the extension relates to;
- Specify the date on which the extension is to end;
- Be dated; and
- Sent to the employee.

#### **➤ Through the line manager's absence**

Where an application is sent to the head teacher/line manager who will deal with the application and that person is absent from work due to leave or illness, an automatic extension applies. The period that the head teacher/line manager has to arrange the meeting will commence either on the day of the head teacher/line manager's return or 28 days after the application is made, whichever is sooner. On the person's return, it will be best practice to acknowledge receipt of the application so the employee is aware that the extension has applied and the period when they can expect to meet their head teacher/line manager to discuss the request.

There are no other circumstances where an automatic extension to any period applies.

### ***When can an application be treated as withdrawn?***

There will also be occasions when an application is treated as withdrawn. In all circumstances a written record must be made. **Form FW (G): Notice of Withdrawal** has been provided for this purpose. There are three reasons why an application may be treated as withdrawn:

#### **The employee decides to withdraw the application**

An employee who withdraws their application will not be eligible to make another application for 12 months from the date their application was made. This will therefore be a factor the employee will want to bear in mind when considering withdrawing their application. Where the employee decides to withdraw their application, they should notify their head teacher/line manager as soon as possible and in writing. This is essential to avoid any misunderstandings and **Form FW (G): Notice of Withdrawal** can be used for this purpose.

A head teacher/ line manager who is informed verbally that the application is withdrawn by the employee but does not subsequently receive written confirmation should contact the employee to confirm their intentions. Where the head teacher/line manager does not receive confirmation from the employee, the head teacher/line manager should confirm the withdrawal in writing.

#### **The employee fails to attend two meetings**

In cases where an employee misses two meetings without reasonable cause, the head teacher/line manager may treat the application as withdrawn. It is therefore in the employee's best interests to inform their head teacher/line manager as soon as possible if and why they are not able to attend a meeting. For example, if an employee misses a meeting for a reason such as their child falling ill and informs the head teacher/line manager straight away, the employer should treat this sympathetically. However, if an employee simply misses a meeting and does not explain why, then they can expect their absence to be treated less sympathetically. The head teacher/line manager should warn the employee that they risk their application being treated as withdrawn if they miss another meeting without reasonable cause when rearranging the meeting.

#### **The employee unreasonably refuses to provide the employer with**

## **the required information**

There may be occasions where the head teacher/line manager is willing to accept a request for flexible working, but requires the employee to provide them with certain information before they can do so. If an employee unreasonably refuses to provide the employer with the information, then the employer can treat the application as withdrawn.

## **7. Unresolved applications**

Most applications will conclude with a satisfactory outcome either when the head teacher/line manager gives their decision or at appeal. But there will always be some cases, even after an appeal, where an employee feels their application has not been dealt with to their satisfaction. The employee may want to involve a third party or be thinking of making a complaint to an employment tribunal. An employee only has the statutory right to pursue further mediation and / or complaint if they are eligible under the statutory right to request flexible work.

### **In what circumstances can a formal complaint be made?**

An employee may make a complaint to an employment tribunal or ACAS arbitration where:

- they are eligible under **the statutory right** to request flexible work
- the head teacher/line manager concerned has failed to follow the procedure properly; or
- the decision by the head teacher/line manager to reject an application was based on incorrect facts.

An employee has no right to make a complaint where they simply disagree with the business grounds provided by the head teacher/line manager for declining a request, and neither has the employment tribunal/ACAS binding arbitration powers to question the head teacher/line manager's business reasons.

A breach of the procedure may, for example, be a failure to hold the meeting to discuss the application within the timescale (where no extension has been agreed) or where the employer fails to provide all the necessary information in their notice to the employee of their decision. Missing a deadline as laid out in the procedure by one day will technically constitute a breach, although in the vast majority of cases where this is simply an accident the problem should be resolved at the workplace.

Equally, it is important that the head teacher/line manager ensures that facts provided to explain why a business ground applies are correct. While a tribunal or arbitrator has no power to question the employer's actual business grounds for declining a request, any rejection based on incorrect facts will provide a basis for making a complaint. Where an employee suspects that a fact is incorrect they must first raise this at appeal. For example, an employee may appeal by arguing against the employer's grounds that there is no-one else to provide cover in their absence, which if not addressed by the employer at appeal could be a basis for making a complaint to a tribunal or arbitrator. Apart from breaches of procedure



relating to the failure to meet deadlines in respect of the meeting to discuss the application or the appeal hearing; or notice of the decision on the application or on appeal, the employee cannot make a complaint to an employment tribunal unless they have received notification that their application has been rejected on appeal.

### **Remedies and compensation**

An employment tribunal or ACAS binding arbitration, which finds in favour of the employee, will be able to order the employer to:

- reconsider an application by following the procedure correctly; and/or
- pay an award to the employee.

The level of compensation will be an amount that ACAS or the employment tribunal feels to be just and equitable in all the circumstances, limited to a maximum amount. The maximum level is eight weeks' pay. The week's pay itself will be limited to the maximum provided under Section 227 of the Employment Rights Act 1996. This is reviewed annually and at 1 January 2003 was £260.

In addition, where a head teacher/line manager is found to have prevented the employee from being accompanied either at the meeting to discuss the application or appeal meeting they may make a separate award of up to two weeks' pay. Again, the week's pay is capped, as set out above.

## **8. Protection from detriment and dismissal**

Employees who are eligible under the statutory regulations are protected from suffering a detriment or dismissal for making an application under the right. Employees who believe they have suffered detriment can complain to an employment tribunal (see Section 7) regardless of their length of service. In most cases, employees will be able to make a complaint to an employment tribunal if they are dismissed during the procedure of making an application.

### **What protection is there against detriment for requesting flexible working?**

An employee is protected against being subjected to detriment by any act or deliberate failure to act by their employer because:

- their application to work flexibly has been granted.
- they made an application to work flexibly under the right.
- they have made or have stated their intent to make a complaint to an employment tribunal in respect of their application to work flexibly.

Detriment can cover a wide range of forms of unfair treatment, such as denial of promotion, facilities or training opportunities which the employer would otherwise have offered or made available.

Employees who suffer unfair treatment at work for the above reasons may make a complaint to an employment tribunal.

### **In what circumstances is an employee protected from dismissal under the rights?**

Dismissal means the termination of employment by the employer, with or without notice. It could also include constructive dismissal, where the employee has resigned because the employer has made a substantial breach of the contract of employment indicating that he or she intends no longer to be bound by it. Or, it could include the expiry of a fixed-term contract without its renewal or the end of a contract that expires when a specific task has been completed.

It is unlawful for an employer to dismiss an employee because:

- their application to work flexibly has been granted;
- they made an application to work flexibly under the right; or
- they have made or have stated their intent to make a complaint to an employment tribunal in respect of their application to work flexibly.

This protection against dismissal also applies if an employee is selected for redundancy on these grounds.

## **9. What other parenting rights do employees have apart from the Right To Request?**

**Maternity Leave** gives all pregnant employees whose babies are due on or after 6 April 2003 the right to a period of ordinary maternity leave of 26 weeks and for those who qualify on service an entitlement to additional maternity leave of a further 26 weeks. Please consult the *Employees & Management Guide to Maternity Provisions*

**Parental Leave** gives employees – both mothers and fathers – who have completed one year's continuous service with their employer the right to up to thirteen weeks' unpaid parental leave to care for their child between the birth and the child's fifth birthday. In cases of adoption, the leave can be taken up to five years from the placement of the child, or up to the child's 18th birthday if that is sooner. Parents of disabled children can take up to eighteen weeks' parental leave up to the child's 18th birthday. Further information is available in the *Employees and Management Guide on Parental Leave*.

**Paid Paternity Leave** gives eligible employees whose babies are due or born on or after 6 April 2003 the right to take up to two weeks' paid leave to care for the new baby and support the mother. For further information, see *Employees Guide to Paternity Provisions*.

**Adoption leave and pay** is available to individuals who adopt, or to one partner of a couple where the couple adopt jointly, whose children are placed with them on or after 6 April 2003. The adopter's spouse or partner has the right to paid paternity leave providing they have worked continuously for their employer for 26 weeks ending with the week in which the adopter is notified of being matched with a child. Further information is available from Personnel.

**Time off for dependants** gives all employees the right to take a reasonable amount of time off work to deal with an emergency involving a dependant, and not to be dismissed or victimised for doing so. Further information is available in our Guidelines on Leave entitlements and advice can be obtained from your HR Adviser.

#### **10. Consultation arrangements**

Based on operational experience this management guideline is subject to appropriate review by the Head of Personnel and can be amended following appropriate consultation.

## **ANNEXE 1**

### **Time Allocations**

#### **a. Blocking time**

There are inevitable tensions: staff generally request whole days off, usually tagged on to weekends. Clearly, schools have difficulty delivering this, particularly if there are many part-time staff present; as the curriculum demand evens out across the week and timetable blocks occur on every day.

As a principle, timetables should be constructed to minimise 'trapped time', but accepting that this cannot be avoided entirely.

As a principle, blocks of non-contracted time should be lengthy and clustered at the start or end of the day when possible. However, staff demands for particular days / mornings / afternoons will not be considered to be a primary constraint in timetable design.

If there is trapped time, consideration should be given – within constraints of the budget – to make it contracted time allocated to pupil support activities – e.g. literacy support, coaching ..... If a teacher is required to remain on school premises during trapped time, this must be paid.

#### **b. Timetable requirements**

The member of staff may be required to teach any subject for which they are qualified, or with reasonable training might reasonably be expected to be able to teach, in order to make a viable and suitable timetable.

#### **c. Split groups**

It is educationally undesirable to split groups between teachers. Wherever possible, timetables should be constructed on the basis that a member of staff teaches all lessons with a particular group.

#### **d. Directed time**

- i. Whole day events – staff should attend INSET days in proportion to their full time equivalence. Headteachers may determine which of the INSET days staff should attend, taking into account normal timetabled days if it is not convenient for the member of staff to vary

their days. This should be determined as part of the timetable consultation process before the start of the academic year. Decisions made at this time may only be varied by mutual consent.

If it is impossible for the member of staff to match their directed time with the available INSET slots, they must use the directed time to follow any course materials.

Headteachers may optionally request that staff attend additional INSET sessions on a paid basis, but may not insist.

ii. Attendance at after school hours events

There is a requirement that staff should attend calendared events such as parents evenings for groups that they teach. If the total time spent in such events over the course of a year exceeds the proportional fte<sup>1</sup>, Headteachers should arrange for payment at 1/1265 x salary per directed hour. With proper planning and an agreed written statement, it should be rare that the proportional limit is exceeded.

If the member of staff is not available because it is a day that they are not timetabled to work and they have other commitments, they must provide detailed written feedback for the teachers who will be present at the meeting and if necessary arrange for parental appointments after school on a working day.

If the agreed working pattern means that part-time staff routinely miss staff meetings, department meetings etc, the part time worker must use the proportional directed time to familiarise him / herself with proceedings, outcomes and actions, and provide input for further meetings. Departments should consider whether it is possible to vary meeting days by agreement.

iii. Other directed time

A part time teacher must be available to perform such duties specified by the headteacher for their part-time percentage of 1265 hours, allocated reasonably on the days and sessions normally worked. Again, this will be specified in the written statement.

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<sup>1</sup> The proportional fte should be based on the directed hours of a full time member of staff with equivalent responsibilities; otherwise it could be considered discrimination against a part time worker to base their pro-rata figure on the higher 1265 hours.

**e. Payment for bridging time**

When there is trapped time on a regular or occasional basis, consideration should be given to making this contracted time which is paid, in order to undertake appropriate duties which meet the needs of the school, for example in literacy support, ALN support or learning coaching.

In the event that a teacher who works in the morning is required to return for an evening event, there should be a payment of travelling expenses for the extra journey and travelling time of up to 1 hour should be counted against directed time.

**f. Non-teaching duties**

Under the current STPCD, staff are paid for the proportion of teaching hours. This proportion will also apply to student contact activity other than teaching – e.g. form groups, assemblies, mentoring, break-time supervision.

## **ANNEXE 2**

### **Variation of Contract**

- a. **Continuity** – timetable and working hours arrangements are not guaranteed to continue from year to year, although the full time equivalent working hours will remain static unless there is mutual agreement to vary the terms of the contract.
- b. **Request to vary working hours**
  - i. School initiated – it may be that the school requires a part time member of staff to work significantly fewer or greater hours. This is possible only by mutual consent. If consent cannot be achieved, staffing reductions should be processed through the school's policy on staff redundancy, and staffing increases should be processed through internal redeployment or advertisement.
  - ii. Staff initiated – extra hours would only be available if identified on the curriculum costing: the decision to change to part time working is a permanent amendment to contract. A request to reduce working hours significantly should go through the same process as the initial request to enter into part time working.

### **c. Payment for non-contracted days**

Staff required to attend for non-contracted days should be paid for the number of hours x grade salary / 1265 for that day.

### **d. Subject and group allocation**

The allocation of teaching subjects and groups may be skewed in order to provide an efficiently blocked timetable.

### **Pay Calculation**

Calculation of pay must be based on the principles outlined in the school teachers pay and conditions document.