

FLEXIBLE WORKING POLICIES NASUWT CHECKLIST

COMMENTARY FOR NASUWT REPRESENTATIVES

This commentary has been prepared by the NASUWT for use by NASUWT Representatives as the basis for discussions with employers in Wales to agree the policy and procedure for managing flexible-working requests within schools and colleges.

For ease of reference, the commentary replicates exactly each of the sections of the NASUWT Checklist and under each section provides the Union's commentary (in blue shaded boxes) on the key issues to be considered when seeking to agree the policy.

The Union's recommended negotiating position is indicated at the end of each section.

PURPOSE OF THE CHECKLIST

The NASUWT believes that a fair, transparent and consistent flexible-working policy, which treats teachers as highly skilled professionals, is an essential policy in a school or college suite of policies.

Flexible working makes a positive contribution to the workplace by supporting employees in achieving a better work/life balance. Flexible-working policies which accord with the provisions in this checklist will help to recruit, retain and motivate teachers, provide the basis for sound financial and personnel planning within schools/colleges and minimise the risk of grievance and discrimination.

A flexible-working policy is necessary to ensure fairness and consistency in the treatment of all employees making a request for flexible working. It should set out the flexible-working procedure that will be followed by the employer so that all those wishing to request flexible working are aware of the processes involved.

The Checklist below sets out the minimum requirements for an effective flexible-working policy and is entirely consistent with the Acas Code of Practice and relevant legislation.

NASUWT Commentary:

The NASUWT Checklist is compliant with the Acas guidance which represents 'best practice'. Policies which do not comply with this could be viewed negatively at an Employment Tribunal.

There is a significant amount of evidence (e.g. Flexible: friend or foe?, Vodafone, February 2016; *The Flex Factor: Realising the value of flexible working*, RSA and Vodafone Report, July 2013; *Flexible working provision and uptake*, CIPD Survey Report, May 2012) that shows that flexible-working arrangements deliver positive benefits, such as increased employee motivation, commitment, less absenteeism and better employee relations.

KEY ELEMENTS OF A FLEXIBLE-WORKING POLICY

Flexible-working policies acceptable to the NASUWT will have the following provisions:

- The policy applies to all employees.
- The policy will operate in accordance with the duties to promote equality, to eliminate discrimination and to promote good relations between staff with protected characteristics as required under the Equality Act 2010.

- The policy recognises that all employees have the legal right to request flexible working.¹
- The policy defines flexible working (i.e. job sharing, working from home, part-time, compressed hours, flexitime, annualised hours, staggered hours and phased retirement).

NASUWT Commentary:

The policy should make it clear that all employees (not just parents or carers) with at least 26 weeks' continuous service have the right to make a request for flexible working annually. NASUWT Representatives should argue for this to be a day-one right rather than a right that is obtained after the statutory 26-week qualifying period. The ability to attract, retain and motivate teachers is crucial if schools and employers want to be seen as 'employers of choice' in what is an extremely competitive marketplace.

The Equality Act 2010 places a duty on employers to promote and monitor equality and to eliminate discrimination, and a statement to this effect is important in ensuring this duty is met. This is significant when decisions are made about flexible working and practice. Reference to this, along with a robust system for monitoring and evaluating the impact of the policy, should ensure that equal opportunities are promoted and reduce the potential for claims against the employer.

As employees have the legal right to request flexible working, policies should make it clear that a request for flexible working is something that the employee chooses, rather than the employer.² A statement to this effect is therefore important within any flexible-working policy to ensure that this is not seen as something that is imposed by the workplace/school because it happens to fit their needs in any given academic year.

The list below is not exhaustive, but is illustrative of the different types of flexible working.

- **Part-time working:** working less than full-time hours over a set number of days (usually less than the normal working week).
- **Job-sharing:** a form of part-time working where two (or occasionally more) people share the responsibility for a job between them.
- **Flexitime:** allows employees to choose, within certain set limits, when to begin and end work.
- **Compressed hours:** working full-time hours but over fewer days.
- **Annualised hours:** the employee has to work a certain number of hours over the year but they have some flexibility about when they work. There are sometimes 'core hours' which the employee regularly works each week, and they work the rest of their hours flexibly or when there is extra demand at work.
- **Staggered hours:** the employee has different start, finish and break times from other workers.
- **Working from home on a regular basis:** it might be possible to do some or all of the work from home, or anywhere else other than the normal place of work.
- **Phased retirement:** the default retirement age has been phased out and older workers can choose when they want to retire. This means they can reduce their hours and work part time.

It is important that employers do not try to limit the options available within the policy as this restricts their ability to agree to requests that are made.

NASUWT Representatives should be alert to the need to cross-reference to other policies (i.e. pay and appraisal) and the provisions contained within. For example, appraisal policies should contain a section relating to part-time workers and what is an appropriate way to set objectives and manage their performance. Directed-time budgets should also clearly identify the agreed calculations which are used to calculate the hours that a part-time worker, who has requested flexible working, is expected to work as a proportion of a full-time equivalent.

¹ Sections 80F(1)(b), (5), (8)(a), 80G(2), (3), 80(H)(3)(b), 80I(3) and section 236(5) of the Employment Rights Act 1996(1).

² www.gov.uk/flexible-working/overview.

TIMESCALES

The policy will confirm that:

- an employee can make a flexible-working request at least once in any 12-month period;
- decisions regarding a request (i.e. accepting, accepting with modifications, or rejecting) will be communicated to the employee, in writing, no later than 28 days after the request was made.

NASUWT Commentary:

NASUWT Representatives should argue for there to be more than one opportunity to apply within a 12-month period.

NASUWT Representatives should press for there to be timescales within the policy that are clear and agreed so that decisions and any subsequent appeals can be confirmed within a three-month timescale. It is important to note that any timescales should refer to 'working days'.

It is important for NASUWT Representatives to make sure that any variation to dates and timescales are mutually agreed and should only occur in exceptional circumstances involving complex cases.

PROCEDURE

The procedure will confirm that:

- applications for flexible working will be considered on their merits on a case-by-case basis;
- a flexible-working request should be made in writing, signed and dated, and should include reference to the following:
 - whether this is a non-statutory or statutory request;
 - the change being requested to working arrangements;
 - how this change might impact upon the school/college and how any such effect might be dealt with;
 - a statement saying if, and when, any previous application was made; and
 - a statement saying whether they are making the request in relation to the Equality Act 2010 (e.g. as a reasonable adjustment for a disability);
- the employee will **not** be required to produce a detailed impact assessment when they submit a request;
- the employer has to give serious consideration to all requests for flexible working in a 'reasonable manner';
- if the employer accepts the request, they must write to the employee notifying them of the variation to their contract (e.g. working hours and pay) and that this is a permanent change to their terms and conditions;
- if a request is refused, the employer will provide, in writing, the reasons for rejecting the flexible-working request.

NASUWT Commentary:

NASUWT Representatives should ensure that employers do not refuse a request because there was insufficient information provided within an application. Representatives should therefore ensure that there is a section which makes it clear that the employer will request all the agreed information from the outset. NASUWT Representatives should push for the policy to make clear that any missing information should be requested and that any timescales will not be affected because something is missing from the initial request.

NASUWT Representatives must ensure that policies do not require unnecessary information. There is no requirement for this and the extra layer could result in further work for the applicant.

When considering a request, the statutory process is clear that any request should be considered in a 'reasonable manner' that weighs up the benefits for the employee against the adverse impact on the school. This should be done on a case-by-case basis that considers the possible impact of refusing a request on the employee.

NASUWT Representatives must ensure that flexible-working policies contain the words 'reasonable manner' in order to avoid requests being dismissed without due consideration. A blanket approach which denies flexible working would not be seen to be 'reasonable' and could be subject to legal challenge.

NASUWT Representatives should argue for decisions to be conveyed in writing so that all involved are made clear about the changes and that this is a permanent contractual variation with associated changes to hours worked and pay.

The policy may provide factors which may lead to the denial of flexible-working requests. In any event, the employer should explain fully and in writing to the individual the reasons for rejecting an application which may refer to one or more of the following factors:

- the burden of additional costs;
- an inability to organise work amongst existing staff;
- a planned structural change to the school/college;
- a detrimental effect on the ability to meet customer demands;
- a detrimental impact on performance;
- a detrimental impact on quality;
- insufficient work for the periods the employee proposes to work;
- an inability to recruit additional staff.

NASUWT Representatives should ensure that policies specify only one or more of the aforementioned reasons for a refusal to request flexible working.

Claims that flexible working will have a detrimental impact on quality, based on concerns over exam results, should be challenged. Detailed evidence should be requested from the employer to substantiate claims that such working arrangements would impact adversely on the education of students.

Schools/colleges should be reminded that their decisions may be the subject of much more detailed scrutiny at the appeal stage, or at an Employment Tribunal.

REPRESENTATION

The policy will confirm that:

- employees will have the right to be accompanied at informal stages where appropriate;
- employees must be allowed to be accompanied by a trade union representative at the appeal stage of the policy.

NASUWT Commentary:

This represents good practice and is underpinned by Acas guidance in relation to flexible working.

The right to be accompanied assists in resolution at its lowest level, without recourse to other procedures (e.g. grievance). It also assists employees in effectively articulating their views.

APPEALS

- The policy must include provisions for employees to appeal against any formal decision made in accordance with the appeals procedure within the policy which meets, as a minimum, the statutory requirement on dispute resolution.
- Appeals should be dealt with impartially and wherever possible by an individual who has not been involved in the case.

NASUWT Commentary:

This represents good practice and is in accordance with the ACAS guidance in relation to flexible working.

The policy should make it clear that this right applies to any formal decision and not just those where the employer has rejected the request in full.

As the whole process must be concluded within three months, the NASUWT would expect that appropriate timescales for an appeal are referred to.

As a matter of good practice, the timescales for appeal should be as follows:

- ten days to lodge an appeal in writing once written confirmation has been received that a request for flexible working has been refused;
- ten days for an appeal hearing to be arranged which will be confirmed in writing.

TRAINING

- The policy should commit the employer to ensure that managers dealing with flexible-working requests are properly trained for the task, familiar with the procedures and knowledgeable about how to deal with a request for flexible working.

NASUWT Commentary:

The policy should make it clear that managers involved in dealing with flexible-working requests should be appropriately trained so that they have the requisite knowledge and are familiar with the process involved in making a flexible-working request. This ensures that flexible-working requests are given due diligence rather than being inappropriately dismissed.

MONITORING AND REVIEW

The policy will:

- confirm that individual records will be treated as confidential;
- be monitored to ensure consistency of application and adherence to equalities legislation;
- be subject to an equality impact assessment;
- be annually reviewed and monitored, in respect of requests and outcomes, by the relevant body in conjunction with recognised trade unions.

NASUWT Commentary:

It is important that policies are regularly reviewed, in consultation with trade unions, to ensure that they are fit for purpose and up to date.

The policy should make it clear how frequently it will be monitored (e.g. annually, every six months) and the way it will collect data on different sections of the workforce to ensure that the policy can be effectively assessed in respect of protected characteristics.

An equality impact assessment of the policy should ensure that the school/college promotes equality and does not discriminate against teachers with particular protected characteristics as defined under the Equality Act 2010, including:

- religion or belief;
- marriage and civil partnership;
- pregnancy or maternity;
- race;
- age;
- sexual orientation;
- sex or gender;
- gender reassignment; and
- disability.

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