

Beyond hybrid the current state of flexible working

7 October 2021

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[Read our advice on flexible working](#)

Introduction

It was not so long ago that the words 'flexible working' featured little in people's daily vocabulary. Now, because of the coronavirus (COVID-19) pandemic, the question of flexible working has piqued so much global interest that it is impossible to escape the constant headlines.

By and large this interest has been almost entirely devoted to considerations of hybrid and homeworking. Many recent surveys conclude that the future is likely to be characterised by hybrid working, where employees split their time between the workplace and working remotely (usually at home).

It is a model which has the backing of both businesses and employees. A [YouGov survey commissioned by Acas](#) found that over half (55%) of employers in Great Britain expect an increase in staff working remotely or from home part of the week, while a [report by Work After Lockdown](#) showed that 7 in 10 (73%) employees wanted to adopt a hybrid work arrangement.

Making hybrid working a success is not without challenge. Acas has been working with the government and Chartered Institute of Personnel and Development (CIPD) Flexible Working Taskforce, identifying some of the big challenges in shifting to hybrid working. Key aspects are captured in [our new hybrid working advice](#), including around job design, people management and inclusivity.

In thinking about inclusivity and acknowledging that hybrid working may not be accessible to all, it seems opportune to take stock of flexible working more broadly. Crucially too, the government has launched its [consultation on making flexible working the default](#), proposing various changes to the legislative framework and further steps to stimulate a much-needed cultural shift.

Certainly, research suggests that there are some fundamental issues that relate to all forms of flexible working that, if left unaddressed, will undermine all efforts to rethink flexible work arrangements across the board. There is growing evidence to suggest that there remains a significant mismatch between employees' preferences towards different types of flexible working and employers' offerings.

The [Timewise Flexible Jobs Index 2020](#) showed barely any shift in the number of jobs advertised with flexible working options, sitting rather still at around 2 in 10 jobs despite 9 in 10 people wanting to work flexibly.

Looking to the future, a [survey by the CIPD](#) found that over the next 6 to 12 months, less than a third (30%) of employers are planning to try to increase the uptake of flexible working besides homeworking. Indeed, we are seeing a reversal of trends for some forms of flexible working. Part-time employment, for example, is at its lowest level since 2010, according to a [separate report by Timewise](#).

In order to further understanding of current perspectives and the challenges facing people at work around flexible working, we undertook an analysis of a series of calls to the Acas helpline and found:

- varying levels of awareness of flexible working, with many employers and individuals aware of the statutory right to request but limited in their understanding of the statutory procedure
- concerns around the fairness and reasonableness of requests and responses, with misperceptions of a right to 'have' rather than a right to 'request'
- a lack of confidence in reaching a resolution following a refusal, particularly where internal procedures such as an appeal have been exhausted

Analysis was taken of 50 calls made to the Acas helpline between April and May 2021. The sample consists of 0.7% of the calls discussing flexible working and 1.3% of all Acas helpline calls during this period. Mirroring the wider trend of Acas helpline users, most of the calls originated from employees or those calling on behalf of employees.

Acas helpline users represent a particular population of the labour market consisting of those with concerns or queries about the workplace. The calls summarised cannot be taken as representative of the workforce and flexible working arrangements more broadly. However, the findings offer useful insights into the types of issues experienced and complement existing quantitative survey evidence in this area.

Understanding of flexible working: a mixed bag

Flexibility for all?

The right to request flexible working legislation was introduced in April 2003 and our sample of Acas helpline calls overall suggests that this is a well-established concept. At the point of contacting Acas, most callers had already submitted or received a flexible working request and were seeking advice on next steps.

However, there were some signs that an understanding of this statutory entitlement predated legislative amendments in 2014 which extended the right to request from certain parents and carers to all employees.

Scenario 1: Who's eligible?

An employee in retail rang the Acas helpline with a query: "Apart from the normal, generic reasons for requesting flexible working, such as being a carer, what reasons are acceptable for flexible working?" The caller asked whether the employer can "ask for documents" to prove that they were a carer.

The majority of calls analysed related to requests to work flexibly to manage childcare responsibilities, largely after returning from maternity leave, in addition to other caring roles.

Interestingly, 83% of Acas helpline calls relating to flexible working in 2020 to 2021 were from female employees, compared to 60% for the helpline as a whole. This is in line with an evidence review conducted by Acas ([read a PDF of the research paper on the National Archives website](#)) which found that flexible working remains the preserve of working mothers, despite fathers wanting to play a more active role at home.

The pandemic and what many refer to as an 'enforced' experiment in homeworking across some areas of the economy brought an opportunity to tackle this so-called 'motherhood penalty', but positive changes appeared to be short-lived.

[Data from the Office for National Statistics \(ONS\)](#) found that the initial lockdown in March to April 2020 led to a 58% increase in the amount of time men spent on childcare compared to 2014 to 2015. However, women were still spending 55% more time on unpaid childcare than men, with this figure rising to 99% by September and early October, according to [further data from the ONS](#).

Formal versus informal

While for the most part employee callers to the Acas helpline were aware of the potential to work flexibly, our analysis showed a low level of understanding over whether their application constituted a formal, statutory request.

The way employers had responded to requests received, the varying levels of employees' knowledge around their rights and awareness of organisational policies and procedures were naturally all important contributory factors.

Scenario 2: Knowing the correct channel

A caller's husband working in retail had verbally requested to vary his hours. The caller described the employer response as a "flat refusal". When the worker made two further requests by email, he received no response. In the meantime, he checked the company's website and found "a link where you can apply, but it doesn't say this is how you must apply. My manager did not say there is a formal way of doing this."

The unprecedented need for flexibility during the pandemic saw many employers and employees experiencing the benefits and challenges of different flexible working arrangements and their role in maintaining business operations and individual health and wellbeing.

In the longer term, we could not only expect to see a rise in requests more broadly – through both formal and informal channels – but also greater appreciation and adoption of more fluid or 'ad hoc' working arrangements. The challenge for employers is to adopt clear, fair and consistent procedures in managing and promoting different types of flexibility.

Variation of contract

In a number of instances, employees expressed concern and uncertainty over the knock-on effects of their flexible working arrangement on their terms and conditions of employment.

Scenario 3: Changes to working arrangements and other related terms

A local government employee caller had predominantly been working from home during the pandemic and preferred to continue to do so, having found it beneficial in managing her caring responsibilities. She also wished to reduce her hours. Her employer suggested she complete a flexible working application, but she had concerns about the effect on her contract: "It would be just a change in my hours, wouldn't it? It wouldn't be a change to anything else in my contract? I am a bit worried. I have worked there for nearly 20 years and I don't really want a change in contract. And also, would I lose my right to flexi-time?"

Such cases underline the importance of employers taking a considered approach to flexible working, and seeking to address all the ramifications of the change. Transparent communication and consultation between employers, individuals and representatives in reaching agreements around changes to working arrangements – and evidently in all aspects of any working relationship – will help minimise the risk of misunderstandings.

Interaction with other employment rights

Depending on the nature of the application, the right to request flexible working may be just one thread within a much more complex bundle relating to personal circumstances and employment rights. For example, we heard from several callers who cited mental and physical health issues as the reason for their request to work flexibly, while others needed flexibility in order to better manage their caring responsibilities.

Having an awareness of the breadth of rights and responsibilities set out in legislation – whether it is the duty to make reasonable adjustments, having time off for dependants or parental leave – can help employers and employees have the appropriate conversations to establish the best options and support available.

Scenario 4: Other options to balance work and home

An individual calling on behalf of her husband explained that she had started treatment for breast cancer. Her husband usually worked offshore but wished to spend more time at home to accompany her to appointments and look after their child. The caller and Acas helpline adviser talked through the various options, including the right to request flexible working and time off for dependants.

The right to request, not the right to have

As [Acas research on the cost of conflict](#) showed, differing expectations about what people want and hope for at work can lead to problems – both for individual wellbeing and business efficiency.

A common theme across our helpline calls was a perceived right to flexible working, as opposed to a right to request. This was the case for employers as well as employees.

Scenario 5: Can I reject a request?

An employer called regarding an employee who had been shielding and who had asked to return part time: "I want to double-check we don't have to agree to part time if it doesn't fit with the business, as long as we can consider it? We can't offer those hours to her being a day nursery. That's okay, isn't it?"

The analysis highlights some of the key challenges facing employers in managing applications fairly and consistently. For example, where the same or similar requests from others are known to have been previously granted, setting a precedent for future applications, or where multiple requests have been received.

Scenario 6: Perceived fairness and consistency of decisions

An employee was due to return from maternity leave and wished to change from a late to morning shift for childcare reasons "which has been done before... for a few people". Having informed her employer of the change before maternity leave, she believed that it had been agreed. On returning she was told that the flexibility had been offered to another staff member, putting her "behind in the queue".

It was evident from several employee callers that employers had attempted to offer alternatives where original requests could not be accommodated, for example, different shift patterns.

While some either disagreed or were unclear on the business reasons cited for refusing a request, other examples also demonstrated a degree of understanding, particularly in sectors like retail where there were known challenges around meeting customer demand. Ultimately, however, where a compromise could still not be reached, employees continued to feel a sense of injustice.

Scenario 7: Business grounds for refusal

A retail manager had recently returned from maternity leave and due to childcare requested not to work Saturdays – an express term of her contract. She explained that the company had followed formal procedures and declined the request, citing a detrimental effect on the business. The employer had offered alternatives, but all included working on Saturdays. "Nurseries are not taking kids in the middle of their year; some places don't have space due to COVID; some places aren't even open... I understand that, yes, there is an effect on the business, but I'm also an employee who has worked for over 10 years in your business, and I'm just asking for a temporary adjustment, and still that is not being obliged".

Running out of options

Despite no legal right of appeal against a flexible working decision, many individuals confirmed that their employer had provided this option. However, where this route had been exhausted (or not offered), callers felt that they had few remaining options.

In a small number of cases, employees stated their intention to pursue Acas arbitration or Acas early conciliation (from April 2020 to March 2021, Acas received 297 early conciliation notifications and 135 employment tribunal cases regarding a 'flexible working detriment').

Some planned to lodge an employment tribunal claim on the basis of their request not being handled in a reasonable manner – for example, because they had not received a response within the 3-month timeframe. Others alleged discrimination on the grounds of sex or pregnancy and maternity.

Scenario 8: Potential claim for discrimination

An employee returning from maternity leave requested to work part time due to childcare. The application had been refused due to long-term issues with understaffing. The employee explained that she was considering submitting a claim to an employment tribunal on the grounds of discrimination since she had observed other people being granted flexible working arrangements. "If I say to them: 'I'm really sorry I can't get my daughter a full-time nursery place', do they not have a duty then to relook at that?"

Others appeared to pre-empt their employer's response to their request – "I got a funny feeling what they might do is turn around and say: 'if you can't work Saturday then you're going to have terminate your employment'" – while some displayed hesitancy in asserting their rights generally, believing their speaking up would be futile.

The lessons to take forward

The pandemic has helpfully opened up a well-overdue conversation around where, when and how we work. It has proven what is possible and overturned many of the historic myths that told us '9 to 5 office working' was the one and only viable option.

The current focus on hybrid working is instructive in raising important questions about managing our transition out of COVID-19, and back to what many are calling the 'new normal'.

But hybrid working will never be for all – being an option in the main for those in higher-skilled and better paid roles. And our helpline call analysis reminds us that there still remain some fundamental barriers to effectively introducing flexible working, including understanding of the law, corresponding rights and obligations, and the practicalities of managing requests.

As we think further about reconfiguring working life, we must urgently:

Revisit the basics of all forms of flexible working

This includes raising awareness of rights and responsibilities such as clarifying the boundaries between what is statutory and what is discretionary. In addition, reinforcing flexibility as a positive option will require some behavioural change, including having open,

meaningful discussions with employees and representatives about the possibilities and reaching consensus on what will work in certain organisations, teams and different roles.

Review workplace policies, procedures and practices

The predominant issue in our analysis was less so about the existence of policies and procedures, but rather whether and how these were being communicated and implemented in practice. Communication, as ever, is an essential ingredient in clarifying rights and responsibilities, building trust between employers, managers and employees, and finding agreeable solutions where possible. This involves careful consideration of a matrix of issues, for instance, business benefits and greater balance in both work life and work and wellbeing

Recognise flexible working as a key driver of gender equality

Prevalent gendered perceptions of flexible working remain stubborn. Women disproportionately take on caring roles and are more likely to opt for homeworking arrangements than male counterparts. Changes in organisational culture are needed to challenge old assumptions around flexible working and create positive outcomes for all.