Flexible Working WEC Recommendations, Government Response; a FPSW Briefing

**Recommendation 1(c): All jobs should be available to work flexibly unless an employer can demonstrate an immediate and continuing business case against doing so.**

The statutory Right to Request Flexible Working, which was extended to all employees with 26 weeks’ continuous service in June 2014, enables employees to agree a working pattern which suits them and their employer and better balance work with other commitments.

The Government is committed to working with business and other groups to promote the business benefits of flexible working. We want to see as many jobs as possible offered in this way and while we recognise the need to increase communications activity around flexible working, we believe that individual employers are best placed to decide what types of working arrangements their business can accommodate.

The current statutory scheme strikes a balance between giving employees the flexibility to combine work with other responsibilities and allowing employers to plan effectively. Employers can also advertise jobs on flexible terms or offer flexible working arrangements to their employees outside the statutory scheme if they wish – and many employers already do so.

While it is too soon to formally evaluate the extension of the Right to Request Flexible Working, we are always keen to explore how policies can be further improved and, as outlined in the Government response to recommendation 14, we will work with Acas to learn from organisations that already take a more flexible approach to recruiting and cultivating talent, to better understand the challenges faced by some employers, and to share best practice. We will also explore options for strengthening our communications to encourage employers and their employees to reap the benefits that flexible working can offer.

We believe that Government should lead by example. The Civil Service is an exemplar employer regarding its approach to flexible working in recruitment practices. When advertising vacancies, jobs are advertised as open to all working patterns and that only in exceptional circumstances should a job be considered as full-time only. The Civil Service offer of flexible working has been further strengthened in recent years through the delivery of the Civil Service Reforms and the more recent Talent Action Plan.[6](https://www.publications.parliament.uk/pa/cm201617/cmselect/cmwomeq/963/96302.htm#footnote-012)

**Recommendation 4: The right to request flexible working should be amended to allow those working less than full-time hours to request the opportunity to work more.**

The Right to Request Flexible Working can already be used to request increases, as well as reductions, to the number of hours that an employee works. Employees with 26 weeks’ continuous service with their current employer are already able to use the statutory Right to Request Flexible Working to ask for a permanent change to their terms and conditions of employment (they may do this once in every 12-month period). We will amend the Government guidance on the Right to Request Flexible Working to clarify that employees can ask to increase as well as decrease their hours.

# Statutory Position (as of March 2017)

The statutory right to request flexible working applies only to people who are already employees and have worked continuously for the same employer for 26 weeks. It excludes agency workers and anyone who has made a statutory request in the last 12 months whether or not it was granted.

Employers can reject an application for any of the following reasons:

* extra costs that will damage the business
* the work can’t be reorganised among other staff
* people can’t be recruited to do the work
* flexible working will affect quality and performance
* the business won’t be able to meet customer demand
* there’s a lack of work to do during the proposed working times
* the business is planning changes to the workforce

Employees can complain to an [employment tribunal](https://www.gov.uk/employment-tribunals) if the employer:

* didn’t handle the request in a [‘reasonable manner’](https://www.gov.uk/flexible-working/overview)
* wrongly treated the employee’s application as withdrawn
* dismissed or treated an employee poorly because of their flexible working request, eg refused a promotion or pay rise
* rejected an application based on incorrect facts

Employees can’t complain to a tribunal just because their flexible working request was rejected.

An employee should complain to the tribunal within 3 months of:

* hearing their employer’s decision
* hearing their request was [treated as withdrawn](https://www.gov.uk/flexible-working/applying-for-flexible-working)
* the date the employer should have responded to their request (but failed to do so)

# What happens in practice

***It would be useful if the Minister could explain how the Government is gathering data on the effectiveness of its policy in improving the access of women to decent jobs.***

### The Right of those in employment to Request changes to their work pattern

I have been unable to find any source of quantitative data on how many requests are made, how many are granted, how many refusals are appealed and how many appeals are successful.

On the other hand, FPSW has received significant qualitative and anecdotal information that requests to work flexibly[[1]](#footnote-1) are very frequently refused. In some cases this request is made informally to a line manager who refuses to consider it even though the organisation has declared a policy of supporting it. Many women give up at this point and feel forced to change their job / employer to enable them to accommodate their desire to care for members of their family, be that children or adults. When asked why they didn’t invoke their ‘right to request’ some say they didn’t know about it; others indicate that they don’t see how it could be made to work if their line manager is not willing, so they don’t see the point of making a formal request.

Case study

A woman tells of her two daughters, both of whom have small children. When they were on maternity leave, each requested of her boss that she could work part time when returning to work. Both were refused in the first instance. Daughter one had a long commute to work and faced having to give up her professional job if she couldn’t reduce her hours. She persisted and reached a resolution with her employer that she would return to work full time for two months and then could move to part-time working. Daughter two felt forced to apply for voluntary redundancy under the down-sizing programme her employer had embarked on.

The grounds for refusing flexible working requests are wide ranging and non-specific and are seen by many as an easy get-out for employers unwilling to be accommodating. It has been said by some employers that it would be easier if only one or two staff requested it but it “would be impossible if the majority asked for it”. We argue differently. If flexible working to meet the employees’ requirements were the norm then employers would structure work organisation to accommodate it. In the first instance this may be culturally difficult for some employers used to the old-fashioned concept of nine-to-five and everyone present together; it is unlikely to happen on a voluntary basis. Which is why we have consistently argued that the ‘right to request’ should become a ‘right to have’, so that employers are forced to rethink their work organisation.

The government’s reply to recommendation 4 is helpful as there is currently a widespread belief amongst both employees and employers that once flexible working has been agreed it cannot be reversed at a later date as family circumstances change.

### Position of those seeking new employment with non-standard working pattern[[2]](#footnote-2)

Many women (and some men) are forced to leave an otherwise decent job because of inflexible working patterns and are therefore seeking flexible working with a new employer. Others are seeking to return to work after a career break, still needing a non-standard working pattern. Most require the actual pattern agreed to have certainty to enable them to meet their commitments outside employment. We have both quantitative and qualitative evidence that a very large proportion are finding no decent jobs which offer this flexibility on recruitment. They are forced to downgrade into lower paid work which underutilises their skills and qualifications (see reference[[3]](#endnote-1)).

If work were re-structured to accommodate flexible working requests from existing employees there is no reason why all jobs could not then be advertised as available for flexible working to new recruits and indeed those being promoted internally.

It is our view that the government’s response to Recommendation 1(c) is wholly complacent and inadequate. If they are serious about reducing the gender pay gap, particularly for part time women then employee requested flexible working has to become the norm in modern employment practice, along with publicly provided universally available childcare and social care (see reference[[4]](#endnote-2) ).

1. We make clear that the kind of flexible working we are talking about is the choice of an employee or worker working contracted hours in their usual job at their usual hourly pay. We are not talking about exploitative insecure contracts such as zero hours or ‘on-call’ arrangements. [↑](#footnote-ref-1)
2. The term non-standard working pattern is used here to imply some arrangement which is different from the one the employer would see as the norm, for example ‘full time office hours’. For example, it includes both contractual specific hours which differ from ‘office hours’ and arrangements where the number of hours might be contracted but not necessarily at specific times. A typical non-standard pattern might be term-time only, leading to a job being less than full time. [↑](#footnote-ref-2)
3. <http://www.fairplaysouthwest.org.uk/images/The_Gender_Pay_Gap_elimination.pdf> [↑](#endnote-ref-1)
4. <http://www.fairplaysouthwest.org.uk/images/High_Quality_Affordable_Childcare_event_report_final.pdf> [↑](#endnote-ref-2)