

## Flexible working policy and Procedure

Version:	2.3
Bodies consulted:	Staff side chair, Management Committee
Approved by:	PASC
Date Approved:	29.1.14
Lead Manager:	Shilpi Sahai Human Resources Manager
Responsible Director:	Director of Human Resources
Date issued:	Jan 2014
Review date:	Dec 19



# Flexible working policy and procedure

## 1 Introduction

The Trust recognises that it is important that staff have a healthy work life balance in order to fulfil work responsibilities and deal with matters in their private lives. The policy is aligned with section 34 of the NHS terms and conditions of service handbook and adheres to the Equalities Act 2010, in that all requests to work flexibly should be considered carefully and the key criterion for deciding whether to grant applications must be that there is no detriment to the business of the Trust.

## 2 Purpose

The Trust believes that enabling employees to work flexibly will aid its retention of existing skilled staff and broaden the pool of applicants to a post. It will also assist the Trust in its objective of providing equality of opportunity for all existing and potential employees.

Having a flexible working policy enables the staff members to balance the demands of their work and their life outside work, and the Trust will benefit by having:

- greater employee satisfaction
- higher staff retention
- reduced absenteeism and workplace stress.

## 3 Scope

This policy applies to all members of staff and includes those who have statutory right to request flexible working and those who may request to work flexibly outside the statutory right. Employees who do not have the legal right to request flexible working can request their managers if they can work flexibly under this policy. No one will be treated less favourably on the grounds of their protected characteristics as specified under the Equalities Act 2010 ( i.e. age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race religion or belief, sex, sexual orientation)

## 4 Definitions

Flexible working refers to any change from the standard Full time working week of 37.5 hours worked between set times and at a set place. In practice, this might mean:

Working part-time, working only during term time, or working from home some of the time adjusting their start and finish times adopting a particular shift pattern or working extended hours on some days with time off on others.

There is however no obligation on the manager to automatically grant a request for flexible working.

The "right to request flexible working" essentially gives employees who have parental responsibility for children, or adult caring responsibilities, the right to ask their manager for a change to their working hours or place of work and the Trust is obligated to apply a designated procedure to consider such requests and only reject it if there are good business reasons for doing so. Employees in this category have the right to ask for flexible working, but not the right to have it granted. Managers can reasonably decline applications made under this right where there is a legitimate business ground.

#### **Those with a statutory right to request flexible working :**

- Some staff have a statutory right to request to work flexibly. In order to exercise that right the person must:
- have been employed continuously for 26 weeks by the time they make their request; and  
not have made another statutory request in the past 12 months. Employees can make one application every 12 months - even if the second request in this period was for a different caring responsibility. For example, an employee wishing to make a request to care for an adult would still have to wait a year even if their previous request had been to enable them to care for a child. Each year runs from the date the first application was made.

- **Parental Responsibilities:** The employee can only make an application to care for either:
- a child aged under 17 if they have or expect to have parental responsibility for that child

a disabled child under 18 who receives Disability Living Allowance (DLA) if they have or expect to have parental responsibility of that child

#### **Parents who can make flexible working requests**

- A parent can request flexible working if they are either:
- the mother, father, adopter, guardian, special guardian, foster parent or private foster carer of the child or a person who has been granted a residence order in respect of a child.  
married to or the partner or civil partner of the child's mother, father, adopter, guardian, special guardian, foster parent or private foster carer or of a person who has been granted a residence order in respect of a child

#### **Carers who can make flexible working requests**

A carer can request flexible working if they care, or expect to be caring, for either:

- a spouse, partner, civil partner or relative

someone who lives at the carer's address

A relative is a mother, father, adopter, adoptee, guardian, special guardian, parent, in-law, son, son-in-law, daughter, daughter-in-law, brother, brother-in-law, sister, sister-in-law, uncle, aunt or grandparent. Step-relatives, adoptive relationships and half-blood relatives are also included.

Within the context of current equalities legislation, no member of staff will suffer any form of discrimination, inequality, victimisation, harassment or bullying as a result of implementing this policy. Unless the situation comes into one of the exceptions where managers are specifically allowed to take someone's protected characteristic into account, the policy does not allow decision about flexible working to be influenced by someone's protected characteristic of age, gender reassignment, disability, marriage and civil partnership, pregnancy and maternity, sex, sexual orientation, race, religion and belief. Please contact Human resources for further advice if required.

Application form (**Appendix B**) should be used for this purposes.

### **Legal Right to Request Time off to Train or Study**

From 6 April 2010, employees of organisations with more than 250 employees can request time off work to train or study. The Employee Study and Training (Procedural Requirements) Regulations 2010, which are being introduced under the Apprenticeships, skills, Children and Learning Act 2009, are similar to those governing flexible working. Requests for time off to train or study will be recognised as a form of flexible working under this policy.

Employees have the right to request time off to train or study and to have this request considered in accordance with a statutory procedure, as detailed under paragraph 3. There is no absolute right to take time off for training, and no requirement for employers to pay employees during the time off or to pay for the training itself.

The following criteria should apply:

- Employees must have completed 26 weeks' service at the date of their request.
- The request must include certain information such as:
  - details of the training or study;
  - where and when it would take place;
  - who would provide or supervise it;
  - what qualification (if any) would be achieved. Although the training or study does not have to lead to a qualification, it should improve employees' effectiveness at work and, therefore, benefit the organisation. The request must explain how this would be brought about.

Once employees have put in a request, they cannot re-apply for another 12 months, irrespective of the outcome.



### **Part Time Work**

This is the most popular and well-established form of flexible working. It is widely used in the Trust already for jobs that can be done in fewer hours than the standard working week.

### **For those with Childcare responsibilities**

Parents (including adoptive and foster parents) with children aged under six or disabled children under eighteen have a right to request a flexible working pattern. The Trust will consider each case seriously and a request will only be refused where there is a sound business case for doing so i.e. when an individual's choice to work flexibly would be of detriment to the service provided. (Full details appear in previous section titled definition and scope)

### **Annualised Hours Contract**

This is where the employee works a specific number of hours per year, but not necessarily the same hours each week or month. They may work longer hours during a particular part of the year to meet service demand, home responsibilities or both. This type of work is popular where there are peaks and troughs in demand for a service

### **Term Time Only Working**

This is a version of an annual hours contract. An employee works during the school term but not in the school holidays (and is therefore unpaid during that period). The salary will however be divided into twelve equal parts and paid monthly. The advantage of this scheme is that absence during school holiday periods is planned and the need to provide cover can be budgeted for. It also allows parents to spend more time with their children.

### **Job Share**

This involves splitting one full time job into two part time jobs but recognizing that they are separate posts. Both receive pay for the hours they work.

### **Compressed hours**

This 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. They would be paid for a full-time job, but would not receive overtime payments for the agreed extra hours they work in any one day.

### **Flexi Time**

Flexi time allows staff to vary their starting and finishing times to fit in with their outside commitments and at the same time fulfil their contractual commitments. Flexitime is a scheduling arrangement that permits variations in an employee's starting and departure times, but does not change the total number of hours worked in a week. Flexitime may be applied to full-time and part-time positions. Flexi Time may be agreed with manager for a short duration of time (e.g. one or two weeks to meet unforeseen obligations)

outside work and then return to regular working time). This is different to a more formal agreement where variation to an employee's starting and departure times are for a long term. The purpose of the system is to allow staff the flexibility to arrive late/leave early in order to accommodate their personal circumstances. All Arrangements must be agreed by the appropriate line Manager, who must consider the implications on the team, so that cover is agreed before informal flexi time is worked.

### **Occasional / Temporary Home Working**

This is where a member of staff agrees to take on the responsibility of meeting their contractual obligations by working from home on an occasional or temporary basis.

In agreeing to work at home, any costs incurred in the production of work e.g. phone or electricity costs must be borne by the employee, so the decision to do this must be considered carefully.

**Excess Hours and Time Off in Lieu** Time off using excess hours as a result of required deadline or a project work and must always be agreed in advance with the Line Manager. Agreement is needed how/when to take annual leave or combining TOIL with annual leave. This should not result in any detriment to service delivery. TOIL must be taken within AFC terms and conditions. Please contact HR for further advice

**Flexible working on days not normally worked:** May be agreed in instances where staff is required to attend work on days that they normally do not work but may have to attend work due to service needs or mandatory training events like INSET days. In such circumstances where it is not possible for staff to swap days then they can agree with their line manager how they may be compensated for working on extra day/ time. This should take the form of Time of in Lieu. In some situations staff may have to attend urgent personal business on a day that falls within their normal working day and may request to swap the working day with day they normally do not work in order to accommodate personal circumstances. This must be discussed with line manager and agreed in advance.

## **5 Duties and responsibilities**

### **Chief**

**Executive:** The Chief executive has overall responsibility for ensuring that the Trust maintains a legally compliant fair and equitable procedure

**Human Resources:** Human Resources Director and HR staff will ensure that this procedure is implemented effectively and that managers and employees are made aware of this policy via the Trust intranet and policy briefing session held jointly with staff side.

**Managers and Employees:** Manager's will apply this procedure in a fair and consistent manner and the employees will comply with this procedure

Managers are expected to use their discretion in authorising applications to work flexibly, taking into account the particular circumstances of each case, and taking advice from Human Resources where appropriate.

The Manager should give full consideration to the request both where the legal right to request is being exercised and for other types of flexible working requests, finding out the reasons for the request, the benefits and disadvantages to the individuals and the department, the requirements of the service and the ability to meet service demands if the request is met.

In case of a request from those with legal right to request, the manager has legal duty to consider the application as defined under the formal statutory process. In such cases if the manager decides to refuse the request the reasons

- given for refusal must be substantiated e.g. unsuccessful recruitment for job share. Where a manager suspects the right is being abused, the manager might reasonably request evidence of this, or invoke the disciplinary procedure where necessary taking advice from Human Resources. ( Please use the Application form appearing under Appendix B)
- As part of their decision making process, and in considering the implications of how a flexible working pattern might work, it is important to consider the following key questions:
  - Is the change in the interests of the team and the service as a whole?
  - If hours for one team member reduce how will the extra work be done or redistributed?
  - What support might other staff need?
  - How will the arrangement be monitored?

Managers should not feel obliged to give an immediate answer and may wish to try the proposed new ways of working for a set period before agreeing to implement anything on a permanent basis. This arrangement should be agreed first with the staff member concerned. All those staff affected should have the opportunity to comment on the proposals and raise any concerns that they might have. It is important to ensure that staff who may be away from work (e.g. on sick leave or maternity leave) are included in the discussions and are sent details of all new arrangements.

The member of staff must carefully consider any implications that their request may have on service delivery and on team members. They must clearly explain the reasons for the request to work flexibly and may seek advice from Human Resources or their Trade Union representative.

The policy should be applied consistently so as to avoid discrimination when deciding who can change their working hours or work flexibly, by not only looking at the reason for the request, but to first consider whether the Trust would still be able to carry out its purpose if the request is agreed. Some of the examples of other factors to bear in mind by the manager and member of staff are:

#### Burden of additional costs

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

All arrangements should be confirmed in writing so that everyone is clear about how new practices will work. The changes to the terms of contract following the request under legal right will be confirmed by HR, in the contract amendment letter.

## 6 Procedures

**Formal Process:** The employee must make a request for flexible working in writing to their manager (email is acceptable); stating that the request is a request for flexible working, explaining the reason for the request, specifying the change(s) to working arrangements that the employee would like and state the date on which the employee proposes the requested change(s) should take effect.

In addition the request must indicate the effect(s) that the employee thinks the change(s) will have on the department and service delivery and how he or she thinks any such effects might be dealt with. They must also indicate whether a request has been made on a previous occasion and, if so, when. The aim is to encourage the employee to think through what he or she is proposing, and to consider if it is realistic and how the new working pattern requested might be made to work in practice.

In case the line manager requires more information or the request does not contain all the required information then they should speak to the employee informally to explain what further information is required and to ask the employee either to provide the missing information or to resubmit the application with all the relevant information.

The manager should be prepared, where appropriate, to provide the employee with assistance to resubmit the application so that it provides all the necessary information.

**The statutory procedure & Timescales** should be followed as below:

The manager must hold a meeting with the employee within 28 days of the request being submitted. The employee must be granted the right to be accompanied at the meeting by a Trade Union representative or a work colleague of his or her choice

The aim of the meeting is to discuss the application and how it might be accommodated or to consider alternative options. Within 14 days of the meeting, the manager must write to the employee, either agreeing to the request and specifying the contract variation and when it is to take effect, or explaining why the request has

been rejected. If the employee's request is refused, the reply must state the specific business grounds for the refusal and why these are relevant to the employee's particular case. ( Please refer to Appendix A)

If a request is accepted, dated notification must include a description of the new working pattern, stating the date from which the new working pattern is to take effect and confirm this to Human Resources.

If a request is rejected, the dated notification must state the 'business' or service ground(s) for refusing the application and provide sufficient explanation as to why the 'business' or service grounds(s) for refusal applies in the circumstances.

If the request is rejected and the employee wishes to appeal the decision made, s/he must do so in writing within 14 days of receipt of the decision, setting out the grounds for their appeal. Any further meetings or subsequent decisions taken by the Manager should also be communicated within 14 days of the receipt of the appeal.

If the manager elects to agree to the employee's request at the outset, it is not necessary for the procedural steps above to be followed. In this case, the only course of action that the manager need take is to write to the employee, specifying the agreed changes to his or her terms of employment and the date on which the changes are to take effect.

The employee will have the right to be accompanied by a Trade Union representative or the work colleague at the formal meeting and should let the manager know in advance who will accompany them.

### **Trial Periods**

Consideration where practical should be given to a trial period for all requests including statutory right to request to confirm the practicality of the proposed arrangement, or as a means of avoiding rejection of the proposal and limiting the use of this policy. Length of the trial period for such requests may be mutually agreed between manager and member of staff but should not be more than 2 months. A further application may be made after a period of 12 months from the date of the original application.

Employees should be aware that if the employer approves their application, the variation in contractual terms is a permanent one and the employee has no automatic right to change back to their previous pattern of work, unless the application seeks the variation for a specified time period only. A trial period may be agreed.

## **7 Training Requirements**

If declining a member of staff's request to work more flexibly, the manager, having weighed up all of the relevant factors, should meet with the member of staff concerned and explain why their request cannot be granted. This should

be confirmed in writing. A copy should be given to the individual and one for their personnel file. If possible, they should discuss any alternative strategies that may be possible. Whilst it may not have been possible to grant a request for flexible working in one instance, it may be appropriate to re-emphasise that future applications will always be considered on their own merits.

Where a request is refused the employee may appeal and such an appeal should be made within 14 days of the communication of refusal of the request. This will provide a further opportunity to review employees request and for the employee to question in detail why and how the decision has been reached. The employee should state the grounds for appeal.

#### **Proceeding at the Appeal meeting**

- The appeal will be heard by the Director of the department or a nominated senior manager who will chair the appeal meeting.
- The chair will organize the appeal meeting, confirming the date and time to the employee and the manager who has declined the original application. The chair will be supported by a member of HR team.
- The employee has the right to be represented by a trades' union representative or a work colleague.
- Before the hearing the employee must state in writing the grounds for appealing the original decision.
- The chair will also seek the details of the grounds for refusal from the original line manager. The chair will have the discretion to either invite the manager to attend the hearing or request further details for the refusal in writing. The chair will also seek the details of the grounds for refusal from the original line manager.
- If there is any additional or new information this will be shared with the employee before the appeal meeting.
- All the relevant documents must be shared with the line manager and the employee before the actual appeal hearing.
- The chair will notify the employee of the decision of the appeal within 14 days after the date of the meeting. The notification will either:
- Uphold the appeal, specify the agreed variation and start date **or**
- Dismiss the appeal, state the grounds for the decision and contain a sufficient explanation of the refusal

**This is the final stage of the appeal process.**

## **8 Process for monitoring compliance with this Procedure**

Human Resources will maintain records of employees and applicants in order to monitor equality of opportunity within the Trust. The Director of HR will alert

the management committee and other interested parties should the Trust be challenged in the application of this policy.

## 9 References

NHS Terms and Conditions Handbook ( Amended 2011)  
<http://www.equalityhumanrights.com/>  
<http://www.direct.gov.uk/en/Employment/> Employees/ Flexible working Equalities Act  
2010  
NHS Employers website  
The Employment Act 2002  
Fixed term employees ( Prevention of less favourable Treatment)  
Regulations 2002  
Part - time workers ( Prevention of less Favourable treatment)  
Regulations 2000  
Working Time Regulations 1998

- 
- 
- 
- 
- 
- 
- 
- 
- 
-

## 10 Equality Impact Assessment

Does the policy , function or service development impact on patients , staff and or the public

Yes Staff ( Directly)

Is there a reason to believe that the policy, function or service development could have an adverse impact on a particular group or groups?

NO

If you answered YES in section 5 how have you reached that conclusion? Please refer to the information you collected e.g. research and reports, local monitoring data , results of consultations exercises, demographic data, professional knowledge and experience)

Not applicable

Based on the initial screening process, now rate the level of impact on equality groups of the policy

Negative / Adverse Impact

Low (i.e. minimal risk of having or does not have negative impact on equality)

Positive Impact High (i.e. likely to promote or does promote equality of opportunity)

Date Completed: January 2012

Signed : SHILPI SAHAI (HUMAN RESOURCES MANAGER)

Appendix B

Please provide as much relevant information to enable your line manager to consider your request. Whilst considering your request the line manager will also consider the service needs before confirming the outcome to you. If your request is declined, this will be confirmed to you. If the request is granted under the right to request. Employees should be aware that if the employer approves their application, the variation in contractual terms is a permanent one and the employee has no automatic right to change back to their previous pattern of work, unless the application seeks the variation for a specified time period only. A trial period may be agreed.

The changes to the terms of contract following the request under legal right will be confirmed by HR, in the contract amendment letter.

**Flexible Working Application Form**

Name:
Department:
Date of commencement in Trust: .....
Band:
Current hours & Working Pattern (Days/ hours/times worked:

Please indicate below which flexible working option you wish to apply for:

Describe the working pattern you would like to work in the future (days/ hours/ times worked):

Reasons for applying: .....

Please state how you think your new working pattern will affect your colleagues and the service delivered by the Trust:

Date you would like the new working pattern to commence:

Please state how you think the effect of your new working pattern can be accommodated:

Signed:

.....

---

---

Date:

.....M

MANAGER TO

COMPLETE: Date

application Received

Request Accepted

Request Refused

Please detail any agreements made with respect to accepting request or reasons for refusing the request:

Signature:      Date:

.....

*Please send a copy of this form to the employee and to the Human Resource Department. A change form must be completed and sent to Human Resources.*