

## **Making Flexible Working the Default**

Submission to the Department for Business, Energy and Industrial Strategy

**Chartered Institute for Personnel and Development (CIPD)**

**December 2021**

## **Background**

The CIPD is the professional body for HR and people development. The not-for-profit organisation champions better work and working lives and has been setting the benchmark for excellence in people and organisation development for more than 100 years. It has 155,000 members across the world, provides thought leadership through independent research on the world of work, and offers professional training and accreditation for those working in HR and learning and development.

Public policy at the CIPD draws on our extensive research and thought leadership, practical advice and guidance, along with the experience and expertise of our diverse membership, to inform and shape debate, government policy and legislation for the benefit of employees and employers, to improve best practice in the workplace, to promote high standards of work and to represent the interests of our members at the highest level.

## **Methodology**

### **A representative survey of employers**

YouGov conducted a Flexible Working Consultation survey for the CIPD of Senior HR and decision-makers in organisations. CIPD Members were also invited to take part in this. The total sample size was 1196 senior decision makers in UK employers. Fieldwork was undertaken between 27 October - 15 November 2021. The survey was carried out online. The figures were weighted and are representative of all employers.

We are happy to provide this data to officials from the Department for Business, Energy and Industrial Strategy upon request.

### **Regional focus group with Members**

We also conducted six regional focus groups to explore the consultation questions in more detail. These focus groups were all held virtually with different regions including Scotland, Wales, Birmingham, The North of England, London and the South of England. In total, approximately 75 CIPD Members participated in these. We have provided a selection of quotes from these discussions which have been italicised and indented throughout this document for ease of reference.

### **Wider research and guidance on flexible working**

The CIPD's response to the Government's Flexible Working Consultation also references our wider research and guidance into flexible working. We have provided links to these through footnotes throughout the document.

## **Key Recommendations**

1. The Right to Request Flexible Working should be available to all employees from their first day of employment. Our CIPD consultation survey of over a 1,000 senior HR/ decision-makers showed that 57% are in favour of a day one right to request flexible working.
2. The existing eight business reasons for rejecting a flexible working request continue to be valid and should be retained There may be a need for consideration of an additional business reason as a result of the shift to more home and hybrid working, for example, around the importance of culture, innovation and learning, which can sometimes be better supported in the physical workplace.
3. Employers should be required to show that they have considered alternative flexible working arrangements when rejecting a request. We believe this would encourage greater flexibility and the consideration of alternative solutions that could meet both the needs of the individual and the organisation. Our CIPD consultation survey showed that 74% of respondents felt that employers should be required to do this.
4. We believe that the current statutory framework needs to change in relation to how quickly an employer must respond to a flexible working request. Based on our consultation evidence with members, we recommend that employers should respond to requests within one month.
5. We support building more flexibility into the system and allowing employees to make up to two requests for flexible working per year, based on the balance of evidence from our member consultation.

## Our response

**1) Do you agree that the Right to Request Flexible Working should be available to all employees from their first day of employment?**

We strongly believe that the Right to Request Flexible Working should be available to all employees from their first day of employment. Since January 2021 the CIPD has been campaigning through our *#FlexFrom1st* work to encourage organisations and the UK Government to make this change.<sup>1</sup>

CIPD research has found that flexible working practices in Britain aren't fair. British workers face inequality due to a marked difference in the way employers approach flexible working, with nearly half (46%) of employees saying they do not have access to flexible working arrangements as part of their current role.<sup>2</sup>

Further, CIPD analysis and ranking of the ONS Labour Force Survey, found the use of different flexible working arrangements is unequal across the UK – with some areas being exposed as 'flexible working notspots.'<sup>3</sup> The analysis found that workers in South East England have the best flexible working options, followed by the East of England, while workers in Yorkshire and Humber are least likely to Have flexibility in their role.

Previous CIPD research released in May 2021, found the use of flexible hours – such as part-time or flexi-time – has dropped over the last year while working from home has increased.<sup>4</sup> Flexible working practices cover a wide variety of different working arrangements – such as homeworking, flexi-time, part-time working, compressed hours and job shares and we would encourage employers to think about the breadth of flexible working options available.

The CIPD's survey of over 2000 employees, launched in February 2021, found that while the Coronavirus pandemic has caused a large increase in homeworking, 44% of employees have not worked from home at all since the beginning of the crisis.<sup>5</sup> It also found that those who do not work flexibly are twice as likely to be dissatisfied with their job and work-life balance.

This has often meant those in essential and lower-paid front-line jobs are not able to work from home, and it is crucial that these workers are not left behind when it

<sup>1</sup> <https://www.cipd.co.uk/news-views/news-articles/cipd-launches-campaign-flexible-working>

<sup>2</sup> <https://www.cipd.co.uk/knowledge/fundamentals/reasons/flexible-working/flexible-working-impact-covid#gref>

<sup>3</sup> <https://www.cipd.co.uk/knowledge/fundamentals/reasons/flexible-working/uk-regions-flexible-working-uptake#gref>

<sup>4</sup> <https://www.cipd.co.uk/about/media/press/050521-flexible-hours-dropped-pandemic>

<sup>5</sup> <https://www.cipd.co.uk/about/media/press/010221flexible-working-day-one-right>



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comes to flexible working. The benefits of flexible working – for both employers and employees – are well established, and the CIPD want the opportunities to benefit from these arrangements to be made more equal.

Encouragingly, 42% of respondents to our CIPD consultation survey say their organisation will be more likely to grant requests for flexible working, besides working from home, once the pandemic restrictions have been relaxed, compared to before Covid-19. Therefore, an enhanced right to request flexible working from day one of employment could boost the number of people using flexible working arrangements.

Our CIPD consultation survey of over a 1,000 senior HR/ decision-makers showed that 57% of respondents surveyed are in favour of a day one right to request flexible working. The agreement is the highest from respondents in the public sector (69% ) and lowest from those in the private sector (54%). Support is higher also in larger organisations of 250+ employees (62%), compared to SMEs (51%).

Overall, a majority of focus group attendees think this is the right thing to do and many already offer this in a bid to lead the agenda in this area. Those that have introduced it say their businesses are happy with it and they haven't received any negative feedback.

Several focus group attendees, across different regions, are supportive of this change because they think it will support greater inclusion and diversity:

*“From an employment perspective, it is important to be able to attract and retain a broad pool of talent – so flexible working options are beneficial in creating different routes for candidates who might not have found roles accessible otherwise.”*

Several respondents felt the discussion should take place at an earlier stage and should be a feature of job design and the recruitment process:

*“Employers should be thinking earlier on about the job design so that they can create the role with flexibility options in mind - before recruitment stage. Need to think about how we can change the narrative upfront before an employee has to ask for flexible working arrangements.”*

Some of the focus group participants were concerned about employees asking for an immediate change to a contract that they had agreed at the interview stage – i.e. from full-time to part-time. Several felt that jobs need to be designed as flexible, to begin with and agreed as part of the recruitment process. Others felt that a day one right could have a negative impact on existing employees asking for flexible working, as they worked in teams and customer-facing roles where only a certain amount of flexibility could work in practice.

A small number of focus group participants suggested that the right to request flexible working should start from the point someone has been offered a job so that there was discussion/agreement over working arrangements at the earliest

opportunity. However, other members were concerned that this could significantly slow down the recruitment process at a time when many employers are facing skill and labour shortages and would find the additional time that this would require problematic.

Some focus group attendees emphasised the importance of the Government taking a strategic and holistic approach to employment rights – simplifying and lining up different rights, including the right to request flexible working so they are more compatible and consistent and easier for employers to apply.

Others felt that there needed to be a clear definition of what flexible working means in the legislation so that it can't be misinterpreted.

**10) In your organisation, do you currently accept requests for flexible working arrangements from employees that have less than 26 weeks continuous service?**

At the CIPD, we accept requests for flexible working from day one of employment and, further, we advertise all vacancies using the tagline 'happy to talk flexible working' to encourage conversations about flexible working at the start of the recruitment process and to help recruit a broad pool of diverse talent.

Through our *#FlexFrom1st* campaign, we are also encouraging and supporting other organisations to accept requests for flexible working from day one of employment and we have produced two new practical guides to support employees<sup>6</sup> and employers<sup>7</sup> in this process. Our employee guide supports employees in putting together a strong business case around their request, which considers the needs of the individual, team and organisation. Our employer guide helps employers and line managers to apply a fair and consistent approach to flexible working requests and consider creative flexible working solutions that go beyond simply working remotely.

Our CIPD consultation survey showed that over a third (36%) of organisations already accept requests for flexible working from day one of employment. This indicates that any change of legislation in this area will be an extension of good practice that is already occurring in many organisations and will stimulate further adoption of such good practice. The numbers are higher in the voluntary (47%) and public sector (42%) than the private sector (33%) on already accepting requests for flexible working from day one of employment. The breakdown by size of organisation is SMEs (34%) and organisations of 250+ employees (37%).

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<sup>6</sup> <https://www.cipd.co.uk/knowledge/fundamentals/reasons/flexible-working/requesting-flexible-working-guide#gref>

<sup>7</sup> <https://www.cipd.co.uk/knowledge/fundamentals/reasons/flexible-working/managing-flexible-working-requests-guide#gref>

Some focus group attendees go beyond the day one right to request flexible working and actively advertise roles as open to flexible working:

*“it should be part of the recruitment discussion and on the point of job offer”*

*“We would normally discuss options before day 1 but not as an obligation but an understanding of what employees might want to support our flexibility aspirations.”*

**11) Given your experiences of Covid-19 as well as prior to the pandemic, from an employer perspective, do all of the business reasons for rejecting a flexible working request remain valid?**

Our CIPD consultation survey asked respondents to indicate which out of the eight existing business reasons they felt were still valid for rejecting requests.

Respondents could tick all that apply. The findings showed that the top three business reasons for rejecting requests in terms of validity were:

- The business ability to meet customer demand (identified as valid by 63% of respondents)
- The work cannot be organised amongst other staff (50%)
- There is a lack of work to do during the proposed working times (37%)

Almost a third of respondents pointed to; ‘extra costs that will be a burden on the business’ (32%), that ‘flexible working will negatively impact performance’ (32%) and that ‘flexible working will negatively affect quality’ (31%). Just 14% felt that ‘the business is planning to make structural changes’ was a valid business reason for rejecting a flexible working request and 14% also felt that none of the proposed reasons were valid for rejecting flexible working requests.

Our focus group attendees were generally in agreement that the eight existing reasons were still valid:

*“Business reasons for rejection will depend on the organisation’s purpose and the individual’s role.”*

Some respondents felt though that options D and E – that flexible working will negatively affect quality and performance were out of date and many organisations experience of flexible working during the pandemic had proved otherwise.

Some felt that the reasons needed to be modernised:

*“they needed to take into account not only the experience of the individual working the flexible pattern, but that of the team and the organisation together.”*



Building on this, one challenge cited by several focus group attendees is the ability for organisations to be able to take a more strategic approach when considering flexible working requests:

*“It is difficult to turn down the first few flexible working requests in a team but there then comes a tipping point where it is difficult to accommodate further requests for logistical reasons – it then becomes a ‘first come first-served type of approach.’”*

*“The organisation needs to have a method for reviewing requests which allows them to step above the needs of the individual – a consolidated and co-ordinated response.”*

There were also a couple of suggestions around additional valid business reasons for rejecting requests in light of the impact of the pandemic and the shift to more home and hybrid working.

For example, a number of members supported the need for an additional business reason for refusing requests connected to organisational culture, collaboration and employee learning.

*“There does need to be something in the reasons that highlights the need for new starters to be supported in the physical workplace. Culture, innovation and learning is really key and needs to be included as a valid reason.”*

Others spoke about a business reason if employers did not feel they could fulfil their duty of care to ensure employees at home are safe and have the right resources to do their job.

Others were concerned that we haven't seen the impact of hybrid working yet, so will need to see how things evolve before knowing if these reasons remain valid.

Some respondents noted an increase in requests to work from different locations, which had tax and insurance implications and that this should also be thought through in any changes to the legislation.

However, others felt that:

*“Since the beginning of lockdown there are a lot less reason of why someone should be refused to work flexibly.”*

**14) Do you agree that employers should be required to show that they have considered alternative working arrangements when rejecting a statutory request for flexible working?**

At the CIPD we think it is a good idea for employers to show they have considered alternative working arrangements when rejecting a request. We believe this would encourage greater flexibility and alternative solutions that could meet the needs of the individual and the organisation.

Our CIPD consultation survey showed that 74% of respondents felt that employers should be required to show that they have considered alternative working arrangements when rejecting a statutory request for flexible working. Just 15% disagreed with this. Agreement was higher from respondents in the voluntary (86%) and public sector (83%) compared to those from the private sector (71%) and agreement was also higher from respondents in larger organisations of 250+ (79%), compared to SMEs (68%).

Focus group attendees were also supportive of this:

*“It should be incumbent on the employer to look at alternatives if a request is turned down – it makes sense that it should be part of the process – this should be a partnership approach between the organisation and the employee.”*

Some focus group members felt this should be a two-way process and conversation:

*“This feels like more of an enabling part of the legislation rather than taking a rights based approach – could help to facilitate a more open conversation based on trust.”*

*“This should work both ways. The dialogue needs to be very clear. The employer can give an alternative to see what work bests for them but so can the employee.”*

Several attendees felt strongly that employers should make it very clear why a request has been rejected and hold explanatory conversations with employees around this:

*“There needs to be a reason for the rejection of the request and there needs to have been a conversation with the employee to explain the reasoning behind it.”*

There was some support from a minority of members in the focus groups for the idea of requiring the employer to hold a meeting when requests are declined to explain the reasons.

Others felt this was more a matter of best practice and to be addressed through guidance rather than changing the legislation:

*“Having regulations that require the employer to hold a meeting with the individual is problematic. You don’t want to be too prescriptive to say employers have to come up with an alternative – some employers are unable to do this, and it might deter smaller businesses who don’t have extensive knowledge of asking the question in the first place. It should instead be seen as best practice.”*

**16) Would introducing a requirement on employers to set out a single alternative flexible working arrangement and the business ground for rejecting it place burdens on employers when refusing requests?**

Our CIPD consultation survey shows that 25% of respondents believe this requirement would be a burden on employers to a great extent and a further 40% believe it would be to a moderate extent. Almost a third (29%) felt that it would represent a burden to a small extent/ or not at all. Respondents from SMEs were more likely to indicate this to be a burden to a great or moderate extent (69%) compared to respondents from larger organisations of 250+ employers (62%).

Most focus group participants felt that it was appropriate for employers to offer a single alternative and to clearly explain any reasons for rejecting it. This would potentially support a further dialogue between the employee and employer going forward and support a compromise solution that could work for both parties.

Some respondents felt that if more employee requests were allowed in a 12-month period, this requirement would become more challenging.

One respondent felt that it was good practice to keep a record of all requests, tracking how many were accepted or rejected and reviewing and auditing this over the course of the year, to ensure a fair and consistent approach.

**17) If yes, would this requirement have an effect on the time taken by employers to handle a request?**

In terms of the additional time that this might take employers, if any, to handle a request – 10% estimated this at between 0-30 minutes, a further 10% estimated this as between 31-60 minutes and 18% felt it would take longer than 1 hour. However, a substantial number of respondents (63%) felt they didn’t know what the additional time might be for this.

**18) Do you think that the current statutory framework needs to change in relation to how often an employee can submit a request to work flexibly?**

We support building more flexibility into the system and allowing employees to make up to two requests for flexible working per year, based on the balance of evidence from our member consultation. An employee's and an organisation's circumstances could change over the course of the year meaning that an alternative flexible working request could be feasible/ accepted. Limiting the number of requests to two per year should also not place undue resource and administrative burdens on an organisation.

In all, 44% of our CIPD consultation survey respondents believe the current statutory framework needs to change to allow employees to submit multiple requests to work flexibly. There were no significant differences by sector or between SMEs or larger organisations on this. In all, 39% of respondents disagree that any change is needed.

Of those respondents who believe the framework needs to change in this area, the highest number (34%) believe two requests should be permitted in a 12-month period, followed by 29% who think that there should be no limit on the number of requests and 28% that feel three requests should be allowed in the 12-month timeframe.

Most focus group respondents felt that requests should be limited to two a year to provide greater flexibility for the employee, but to avoid an unnecessary burden on the employer:

*“How do you plan anything if it is more than two? It would create too much work for HR to deal with and most of the time employees will just change their mind and ‘revert back to how they were working before.’”*

One organisation offers the right to request every 6 months but also would consider additional requests:

*“12 months is quite a long time to allow employees to only put in one request.”*

Some focus group respondents felt that the request process would be better if it was more informal so that people could have a conversation with their line manager if changes were needed and try different things out rather than going through the formal route of the right to request flexible working.

Others indicated their support for 3 or 4 requests per year:

*“Workplaces are changing rapidly post covid, so perhaps it is worth organisations updating and reflecting on what they are offering.”*

There was also some support for the idea that a significant change in someone's circumstances should be sufficient to trigger a request under the legislation.

*“If something substantial changes in the employee's life, then they should be able to raise it and have a discussion regardless of how many times they have previously asked.”*

*“If something material changes in the job they should be able to re-request right to work flexibly.”*

However, other members were concerned that this might be hard to define and could lead to disputes over what a significant change is.

Others were concerned about the additional burden that SMEs may face if the legislation changed around a number of requests in a 12-month period:

*“The legislation has created a minimalist way of doing this – it doesn't say that organisation's can't allow more. To legislate for multiple requests will create a lot of work especially for SMEs.”*

*“SMEs don't have the luxury of people and time to respond to requests. It doesn't mean you can't have best practice and guidance on things.”*

**20) Do you think that the current statutory framework needs to change in relation to how quickly an employer must respond to a flexible working request?**

A significant majority of members in our focus groups and 57% of our CIPD consultation survey respondents believe the current statutory framework needs to change so that it reduces the timeframe an employer has to respond to a flexible working request, while 24% disagree. Respondents from the public (64%) and voluntary (64%) sectors were more likely to be supportive of a change in the employer response time, compared to those in the private sector (54%), but there were no significant differences between respondents from SMEs and larger organisations.

Of those survey respondents who believe the timeframe for response needs to be reduced, most (61%) believe an employer should respond within one month. A quarter (25%) believe an employer should respond within 2 weeks and 11% believe a response should be made within 2 months.

Some focus group respondents felt the current timeframe for responding to requests (up to 3 months) should stay the same to ensure organisations could thoroughly consider the request and any potential alternatives. It was felt that if this time was reduced it would put pressure on the team responding and might mean that they would be more likely to jump to a position of rejecting a request due to time constraints:

*“Reducing the response time, especially if the request came in during a busy time, might end up with the process being rushed. If the timelines are too tight then you could end up pushing people into making rushed decisions and limiting conversations where a better alternative could be found.”*

However a majority of focus group participants, felt that the 3-month timeframe was too long for employees to wait:

*“It would have affected their life. Employees will worry about the fact that it takes that long. People would end up looking for other jobs.”*

*“If businesses survived the pandemic, then they found a way for people to work flexibly. If this is possible, there is no reason a request for an employee to work flexibly should take that long.”*

Overall, focus group participants mostly agreed that flexible working requests should be responded to within a month.

CIPD’s view, based on the evidence from our consultation exercise, is that the time that employers have to respond to a flexible working request should be reduced to one month.

**22) If the Right to Request flexible working were to be amended to allow multiple requests, how many requests should an employee be allowed to make per year?**

As detailed above in our response to question seven, we think the right to request flexible working should be amended to allow an employee to make a maximum of two requests per year.

We have called for the right to make up to two requests for flexible working per year as part of our #FlexFrom1st campaign, to build greater flexibility into the legislation and to take into account employees changing personal circumstances.<sup>8</sup>

Our CIPD consultation survey supports this, with 44% of our survey respondents believing the current statutory framework needs to change to allow employees to submit multiple requests to work flexibly. Of those respondents who believe the framework needs to change in this area, the highest number (34%) of responses to this question believe two requests should be permitted in a 12-month period, followed by 28% who think three requests should be allowed.

Most focus group respondents are also supportive of allowing up to two requests in a 12-month period:

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<sup>8</sup> <https://www.cipd.co.uk/news-views/campaigns/flex-from-first>



*“It becomes onerous if you allow an employee to request flexible working too many times, but only allowing it once in 12 months - that isn’t flexible – there needs to be a balance.”*

*“12 months is quite a long time to allow employees to only put in one request.”*

*“The number should depend on the period of time waited between asking. Otherwise, you will have a situation of someone asking for example for compressed hours and when it is turned down, asking for the exact same things again. One solution could be to say that the employee has to wait for 6 months before requesting again, or the request has to be for a different type of flexible working.”*

**24) If the Right to Request flexible working were amended to reduce the time period within which employers must respond to a request, how long should employers have to respond?**

As detailed above in our response to question eight, we think employers should respond to a request for flexible working within a month. Around three-fifths (61%) of our survey respondents favour this approach and a number of our focus group respondents also saw the need to reduce the time period within which an employer must respond to a request.

**26) Are you aware that it is possible under the legislation to make a time-limited request to work flexibly?**

Our CIPD consultation survey indicates that 54% of respondents are aware that it is possible to make a time-limited request to work flexibly under the right to request legislation. Awareness was significantly higher in larger organisations (60%) compared to SMEs (45%). Respondents from the public sector (62%) were also significantly more likely to be aware of this than those from the private sector (51%).

Some focus group respondents were aware of this, others less so.

*“If you have a material change in circumstance you might not be able to do anything long term, so having a temporary arrangement would allow the employee to stay in work and show they can make it work.”*

One focus group attendee had recently done a temporary flexible working period – she found doing the trial useful as an employee as she was able to see if it worked for her and the employer. If a trial is run well and genuinely on both sides, then it should be encouraged. They felt that you have to see how realistic it would be to have it in place.



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One respondent worked for an organisation that implemented a temporary Covid-19 flexible working policy which gave employees the opportunity to make time-limited requests and they were looking to continue that post-pandemic.

Several respondents highlighted the importance of reviewing all requests under the legislation for permanent and time-limited changes as equal regardless of the reason for the request i.e. priority should not be given to parents, carers – people’s wellbeing was just as important, others gave the example of those that had bought new puppies in the lockdown period and needed greater flexibility to support with that.

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**December 2021**