

## Good Work Plan: Making Flexible Working the Default

### UCEA Consultation Response

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This is the response from the Universities and Colleges Employers Association (UCEA) to the government consultation – “Making Flexible Working the Default”. The response is based on views provided by 38 of our member higher education (HE) employers.

UCEA represents the views of higher education institutions (HEIs) across the UK in their capacity as employers. UCEA is a membership body funded by subscriptions from 174 HEIs in the UK, in addition to eight sector associate members. Our purpose is to support our member HE employers in delivering excellent and world-leading higher education and research by representing their interests as employers and facilitating their work in delivering effective employment and workforce strategies.

HEIs are independent employers and determine their own employment policies, often in consultation with recognised trade unions; therefore, there are a variety of HR practices in place in the sector.

### Consultation – Making Flexible Working the Default

#### Summary Response

HEI employers support the principle of flexible working having adapted rapidly to new ways of working during the Covid-19 pandemic. Our members strongly agreed that the right to request flexible working should be a day one legal right and HEI employers revealed that they had already adopted policies to reflect this. Our members recognised the need for some defined parameters in relation to making flexible working requests but questioned whether it would be helpful to make changes to the existing legislation. Our members highlighted the need to consider smaller employers and their more limited resources if introducing additional statutory hurdles.

#### Section 1: Making the right to request flexible working a day one right.

##### **Question 8: Do you agree that the Right to Request Flexible Working should be available to all employees from their first day of employment?**

Most of our members strongly agreed that requesting flexible working should be available to all employees from their first day of employment.

##### **Question 9: Please give reasons for your answer, including any considerations about costs and benefits that may affect employers and/or employees.**

Our members commented that they already had enhanced policies in place that include the right to request flexible working from day one. HEIs saw little value in making the right to request flexible working a “time served” right. Our members evidenced that allowing early flexible working requests provided access to a wider pool of candidates and helped to improve the diversity of their workforces. Some HEIs raised questions about the assimilation of new

starters with regard to building relationships, learning about the role and the organisation. However, HEIs recognised that concerns relating to new starters working flexibly would depend on the nature of their requests and specific roles. On balance, HEIs felt that making flexible working a day one right would offer fairness and consistency across the workforce.

**Question 10: In your organisation, do you currently accept requests for flexible working arrangements from employees that have less than 26 weeks continuous service? Please answer this question from the perspective of the employer.**

The majority of our members who responded confirmed that they already had policies in place enabling employees with less than 26 weeks continuous service to make flexible working requests.

## **Section 2: Whether the eight business reasons for refusing a Request remain valid.**

**Question 11: Given your experiences of Covid-19 as well as prior to the pandemic, do all of the business reasons for rejecting a flexible working request remain valid? Please answer this question from the perspective of the employer.**

On balance, our members who responded held that the business reasons for refusing a Request remain valid.

**Question 12: If yes, please give reasons for your answer.**

Our members commented that the reasons were helpfully broad and allowed sufficient flexibility for employers to decline a request if it could not reasonably be accommodated. HEIs felt that the statutory reasons provided a baseline that was workable for all organisations. Although the past 18 months have precipitated new ways of working, HEIs still felt that the eight reasons for refusing a Request continued to be valid. Our members held that if applied reasonably, the eight reasons would continue to be valid in a post-pandemic context. HEI employers emphasised the importance of retaining the eight business reasons because they allowed scope to effectively consider business need when discussing flexible working requests.

**Question 13: If no, please state which reasons from the list above are no longer valid and why.**

See answer to Question 11 above.

## **Section 3: Requiring the employer to suggest alternatives, where possible.**

**Question 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?**

Our members mostly agreed that employers should be required to show that they had considered alternative working arrangements when rejecting statutory requests for flexible working. However, some of our members were undecided or disagreed, with some strongly disagreeing.

**Question 15: Please give reasons for your answer.**

HEIs felt that requiring employers to show they had considered alternatives would amount to good practice. Some of our members indicated that they had already adopted this approach.

Although our members supported the proposal in principle, they also highlighted the need to balance any new requirement against ensuring a proportionate and reasonable onus of responsibility on employers. HEI employers support a proportionate approach, recognising that in smaller businesses there may be less scope to offer alternatives. We suggest that there should not be a need to enshrine the proposed requirement in legislation, preferring good practice guidance in this area.

**Question 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 members were divided in their responses to this question, with some being undecided.

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

Our members who were in favour of the proposal were divided in their response to this question, some feeling that the requirement would have an effect on the time taken by employers to handle a request and others being unsure.

**Section 4: The administrative process underpinning the Right to Request Flexible Working.**

**Question 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?**

HEIs were divided in their responses to this question with a close to even split between those who felt that the current statutory framework needed to change and those who felt it did not. Some of our members were undecided.

**Question 19: Please give reasons for your answer.**

Our members commented that increasing the number of times employees could apply to work flexibly would not necessarily lead to different outcomes. In terms of a statutory right to request flexible working, an annual opportunity seems reasonable; however, there may be a need for greater flexibility to meet the changing needs of employees, as the current legislation could create barriers to accessing flexible working for employees experiencing exceptional personal circumstances such as those who were newly disabled. Nevertheless, more requests are likely to increase the burden of administration and additional costs which may have a greater impact on smaller employers. HEI employers recognised the need to protect businesses from abuse of process if it were open to employees to make repeated requests for the same flexible working pattern.

**Question 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?**

Overall, our members who responded felt that there was a need to change the current statutory framework with regard to how quickly an employer must respond to a flexible working request. However, some of our members disagreed, or were undecided.

**Question 21: Please give reasons for your answer.**

HEIs commented that the current timescale of 3 months to review and decide on an application was too long, given that requests tended to be submitted due to a change in personal circumstances. Some members evidenced situations where employees had requested flexible working but no longer required the same changes by the time they had

received an outcome. However, HEIs highlighted that there were times when decision making on flexible working requests would depend on the ability to recruit a job share which was likely to prove more time consuming. We suggest that the three-month timescale ought to be prescribed as a maximum, with employers aiming to achieve an earlier conclusion depending on case by case complexity.

**Question 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?**

Of our members who replied, the majority felt that no amendment was required. Of those HEIs who did feel an amendment was necessary, most felt that two requests per year would be reasonable, with some preferring three. Some HEIs held that requests should be unlimited to allow for changes in circumstances but with conditions and parameters in place to prevent frivolous requests.

**Question 23: Please give reasons for your answer, including any consideration about costs, benefits and practicalities.**

HEIs commented that exceptional circumstances may warrant additional requests to be made within a 12-month period. However, some of our members expressed concern that the process could become cumbersome, locking employers in a constant cycle of considering flexible working requests and subsequent appeals. There were also concerns that an increase in the number of requests received would place an undue burden on managers and increase operational costs.

**Question 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 per our answer to Question 21, HEIs felt that 3 months should be the maximum in statute. However, if the statute were to be amended our members generally felt that employers should have more than one month but less than two months to respond to requests

**Question 25: Please give reasons for your answer, including any consideration about costs, benefits and practicalities.**

HEIs highlighted the need to ensure requests could be managed in line with business needs, recognising that the nature of a particular role was likely to have an impact on the speed of decision making. Some of our members commented that they had already reduced their timescales for responding to requests on a voluntary basis without issue. Others were concerned that reducing timescales would not allow enough time for employers to fully consider requests and put forward alternatives. HEIs commented that they were anticipating an increase in flexible working requests as employers started to require employees to return to the workplace and that reducing response timescales would place managers under unwarranted pressure. HEIs felt that employees should not be made to wait unnecessarily if a response could be forthcoming prior to the three-month deadline. Rather than amending the statute, our members would welcome guidance and encouragement for employers setting the expectation that requests will be responded to in under two months.

## **Section 5: Requesting a temporary arrangement**

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

Overall, HEIs were aware that it was possible under the legislation to make a time-limited request to work flexibly.

**Question 27: What would encourage employees to make time-limited requests to work flexibly? Please provide examples**

Our members provided a varied range of responses to this question, with some questioning whether they would wish to encourage time-limited responses for flexible working. Some examples provided by our members were as follows:

- A guarantee of being able to revert back to their former terms and conditions at the end of the period, for example if they were caring for a family member who needed short-term dependent care or rehabilitation.
- Raising awareness of temporary arrangements being an option.
- Clarification around what a 'reasonable' time-limited request may be.
- Clarity on when a request should be for a permanent change would be helpful.
- Senior Manager role modelling using time-limited flexible working.
- Employers actively promoting the making of temporary requests.
- It would be helpful to place more emphasis on making temporary requests within flexible working guidelines.

**Question 28: Please share your suggestions for the issues that the call for evidence on ad hoc and informal flexible working might consider.**

Again, our members provided a variety of suggestions some of which are offered below:

- Good practice guidelines for employers – some roles for example were 'deemed' unsuitable for providing flexibility (not always correctly).
- A need to be clear on boundaries and understand when an arrangement fell into the category of ad hoc and informal working.
- Such requests were usually last minute and made in order to deal with an unexpected situation. Applying a formal process to these requests may lead to some of the flexibility being removed.
- It would be helpful to gather evidence on why some managers resisted flexible working requests in addition to positive case study examples of flexible working success stories.
- With hybrid working becoming the norm for many, there was a need to address the blurring between home and work life.
- It would be helpful to explore different attitudes to flexible working across different sectors, including how widespread flexibility was within different types of roles.
- Guidance would be useful on the interaction between statutory flexible working requests and other statutory provisions such as the right to statutory time off for dependents and flexible working as a reasonable adjustment in some cases.