



Flexible working

further advice and guidance

NASUWT flexible working further advice and guidance

The purpose of this further advice and guidance is to provide more comprehensive detail to assist teachers wishing to make a request to work flexibly.

It should be noted that this advice and guidance, including the [template letter below](#), should be considered in line the other advice and current produced by the Union in respect of flexible working, which can be found at:

<https://www.nasuwat.org.uk/advice/conditions-of-service/flexible-working.html>.

• Planning and preparing for your flexible working request

Being prepared and having a well-planned set of persuasive arguments is essential if your request for flexible working is going to be successful.

In order to enhance the chances of a successful application you should carefully consider in detail the possible impact your request for flexible working would have on the school/college and the work that you do, as well as on your colleagues, and how you think any impact can be dealt with. This can often be the most important factor in determining the outcome of a request.

For example, set out the positive benefits of flexible working to the school/college and address concerns that your employer may have.

Positive benefits of flexible working may include:

- the energy and ideas of two rather than one teacher (if applying for a job-share);
- it has a positive impact on motivation as employees who work flexibly tend to put more effort into the time they are working, as they know they will not be in as often;
- better employee relations by giving people more choice and control over their working hours;
- widens the talent pool at the recruitment stage as schools/colleges that offer flexible working demonstrate a more family friendly approach, which is more desirable for new teachers;
- it helps with the retention of skilled and experienced staff;
- increased workforce diversity and equality of opportunity for certain groups (e.g. those with disabilities who find it easier to work on flexible basis or older teachers who may no longer wish to work full-time);
- enables those who develop a disability to continue to contribute productively;
- reduced levels of sickness absence; and
- maintenance of relationships with pupils.

Outlining how you propose to deal with issues resulting from your request for flexible working may also aid the chances of your application being successful. For example, you might explain how you intend to deal with the arrangements for handover in respect of a request involving a job-share.

This might include specific details of when you will meet and discuss with your job-share partner. If your request involves a job-share then it could assist your application if you can identify other members of staff who also wish to reduce their hours.

A common misconception that is used by schools/colleges is that flexible-working will have a detrimental impact on quality, often based on concerns about exam results. The DfE guidance on flexible working makes it clear that:

A common misconception about teachers who work flexibly and schools who make considerable use of flexible working is that they are somehow not committed to maximising pupils outcomes or that results in their schools suffer as a result of flexible working. In fact there is no evidence to suggest this is the case. The vast majority of teachers who work flexibly are deeply committed to their pupils and many schools take the view that by enabling flexible working they are in fact helping to get the very best out of their teachers.¹

The DfE guidance goes on to state that:

‘Appropriate and effective deployment of flexible working can actually lead to more effective performances and outcomes’.²

Another misconception is that teachers who work part-time are not as committed as those who work full-time. Again, the DfE guidance is clear that:

‘Teachers who work flexibly are deeply committed to their pupils, and many schools take the view that by enabling flexible working, they are in fact helping to get the very best out of their teachers.’³

It should be noted that the number of hours that someone works is not nearly as important as the quality of the work performed during those hours.

When considering mitigation try to think about others’ working patterns. If other teachers already have the same day off then offering alternative days should limit the reason for the school/college to reject the request.

Try to be as flexible as possible with the work pattern that you want. For example, if you only wish to work three days a week then are you willing to negotiate over which days these are.

Considering alternative options and demonstrating a willingness to compromise may also help the chances of your flexible working request being accepted. This could involve a trial period or a different start date, as well as consideration of different types of flexible working (e.g. job share as opposed to part-time working).

¹

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/593990/DFE_Flex_Working_Guidance_2017_FINAL.pdf

² Ibid.

³ Ibid.

- **Attending a meeting and the right to be accompanied**

There is no need to hold a meeting if your employer intends to approve your request, but often your employer will arrange a meeting to discuss your request with you. The time and place of the discussion should be convenient for all parties involved.

It may be helpful to have someone else attend to assist in the discussions with your employer. Whilst there is no statutory right to be accompanied, the NASUWT recommends that you are permitted to be accompanied a view that is reinforced by the [Acas Code](#).

You should both discuss the meeting beforehand and ensure that you understand your request, the issues it raises (if any) and how to respond. This may include consideration of what alternatives you may be willing to accept, or how flexible you are willing to be in order to have your request accepted.

You should not feel like you have to make a decision immediately in response to any proposal from the employer. If necessary, request a short break to discuss things with the person who has accompanied you.

You could ask for the discussion to be recorded or minuted. If no one else is taking minutes, you or your companion should take notes.

- **What happens after the discussion?**

Your employer is obliged to consider your request carefully, looking at the benefits of the changes requested and weighing these up against any adverse business impact this would have.

A decision must be reached within three months from the date the employer received the application, unless an extension to this time limit was mutually agreed.

- **What happens if my request is agreed?**

Your employer should write to you either accepting your request or any agreed compromise identifying the start date and any other appropriate actions.

If you agree to the changes, you should be given a written 'variation of contract'. This can be a temporary or permanent variation depending on what has been agreed.

- **What happens if my request is refused?**

Your employer should write to you refusing your request as soon as possible. Your employer can only refuse your request for flexible working for one of the following reasons:

- the burden of additional costs;
- an inability to reorganise work amongst existing staff;
- an inability to recruit additional staff;
- a detrimental impact on quality;
- a detrimental impact on performance;
- a detrimental effect on ability to meet customer demand;
- insufficient work for the periods the employee proposes to work; and
- a planned structural change to the business

- **Can I appeal against a decision to refuse my request for flexible working?**

There is no statutory right to an appeal hearing but it is good practice and is recommended in the ACAS guidance in relation to flexible working.

An appeal hearing should be convened at a mutually convenient date by someone who is appropriately trained to deal with the appeal in an impartial and objective way.

As a matter of good practice, the timescales for appeal should be as follows:

- ten days to lodge an appeal in writing once written confirmation has been received that a request for flexible working has been refused; and
- ten days for an appeal hearing to be arranged which will be confirmed in writing

At the appeal both parties should be invited to present their case and allowed the opportunity to ask questions and call witnesses (where appropriate).

Once this has concluded, the person hearing the appeal should write to you outlining the decision.

The regulations regarding flexible working provide limited recourse for further action to be taken. However, there may be certain circumstances where the reason given by your employer for the refusal to work flexibly could be seen as discriminatory.

Unlawful discrimination

Employers must be careful not to inadvertently discriminate against particular employees because of their protected characteristics', such as where flexible working arrangements could be seen as a reasonable adjustment for a disabled teacher.

Furthermore, employers must be careful not to *directly* or *indirectly discriminate* against employees, for instance, when dealing with requests from teachers with childcare or other caring responsibilities. **The Equality Act 2010** prohibits discrimination because of protected characteristics, such as:

- age;
- disability;

- gender reassignment;
- marriage and civil partnership;
- pregnancy and maternity;
- race;
- religion and belief;
- sex; and
- sexual orientation.

In addition, employers should ensure that part-time workers are treated consistently with other workers. ***The Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000*** make it unlawful to treat part-time workers worse in regards to contractual terms and conditions than comparable full-time employees, unless treatment can be justified on objective grounds.

Advice and guidance from the DfE makes it clear that all governing bodies should be aware that some people who combine work with caring for dependents have specific rights protected by law. These include various types of leave and the right to be considered for flexible working.⁴

Further advice and guidance:

For further advice and guidance, please contact the NASUWT. We can help with information and advice to support you throughout your request for flexible working.

Tel: 03330 145550

E-mail: advice@mail.nasuwt.org.uk

Website: www.nasuwt.org.uk

Flexible Working Request Template Letter

[Your Name]

Address line 1

Address line 2

Postcode

[Recipient's Name]

Address line 1

Address line 2

Postcode

Date

Dear [insert name]

REQUEST FOR FLEXIBLE WORK

Flexible working makes a positive contribution to the workplace and helps to recruit, retain and motivate teachers. As an eligible teacher at [XXXXXX] school/college I would like to make a statutory request for flexible working.

If returning from a period of leave:

I am due to return from my period of leave on [XXX].

OR

I have previously taken a period of leave on [XXX], and I am responsible for the upbringing of my child and would like to request an amendment to my working pattern to better accommodate such responsibilities.

I have not previously made a request for flexible working under section 80F Employment Rights Act 1996.

OR

I have previously made a request for flexible working under section 80F Employment Rights Act 1996 on [Date].

My current working pattern is [insert details of your current working pattern here, e.g. 'Full-time teacher Monday to Friday'].

Under my request for flexible working, I would like my new working pattern to be [insert details

of your new working pattern here, e.g. '3 days a week'].

[insert any additional details or reasons behind your request as appropriate,

e.g. *'By agreeing to my request, I would be able to pursue a training course that is not available outside of normal working hours'*].

I would like the new working pattern to come into force on [date] [specify if this is for a set period of time, i.e. six months, otherwise the change is a permanent change to your terms and conditions].

If appropriate, add the following:

Please note that my request is being made in relation to the Equality Act 2010¹ [insert appropriate reasoning, such as a reasonable adjustment for: age; disability²; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; and sexual orientation].

Yours sincerely

[insert name]

¹ While there is no requirement to do so, the Acas guidance suggests that employees should state if their request is made in relation to the Equality Act as it may help the school/college understand your application if they appreciate the reasons behind it.

² If you are seeking a request for flexible working as part of a reasonable adjustment for a disability, your school/college must consider this in line with its legal obligations under the Equality Act 2010, including making reasonable adjustments to remove any disadvantage related to your disability. The legal obligation to make reasonable adjustments is **separate** to the legal obligation to consider a request for flexible working.



