



1 December 2021

## **Making Flexible Working the Default**

### **Response from the Fatherhood Institute**

#### **Who are you?**

- 1. An organisation focused on achieving greater gender equality in work/life balance**
- 2. An employer**
- 3. A charity**
- 4. Not applicable**
- 5. 4 employees**
- 6. Not applicable**
- 7. Not applicable**

#### **Consultation questions**

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

Strongly agree but with the caveats set out in Q9 below.

#### **9. Please give reasons for your answer**

Whilst we agree that the Right to Request Flexible Working should be available for all employees from their first day of employment, we believe this should be accompanied by an Advertising Duty on employers, requiring them to outline in job advertisements, in broad terms, whether flexibility is available – and if not, to explain this and give the reasons.

Workers need to know what flexibility options are available before they apply for a job, in order to decide whether the job is likely to be a 'good fit' for them. For those job applicants that already know they need flexible working arrangements in order to take up paid employment, and employees on a probationary period – including mothers, fathers and others with caregiving responsibilities – a Day 1 Right to

Request Flexible Working would not, in itself, improve their situation, and might lead to their being discriminated against.

If no information about the availability of flexible options is outlined in job advertisements/ role descriptions, such individuals would continue – as now – to face a choice of either a) flagging their need to make such a request ‘cold’ at job interview stage, and thus risk not being offered the job; or b) waiting until they were appointed, risking consequential damage to their relationship with their employer at the very start of their employment.

Both of these choices (a & b in the previous paragraph) create an unhelpful tension between the (potential) employee and employer, and could cause insoluble difficulties, if the employer takes a dim view of flexible working (as many do, evidenced by the fact that almost a third of flexible working requests, once made, are turned down<sup>1</sup>).

Thus, shortening the qualifying period to zero does not, in itself, require employers to think substantially differently about flexible working, whereas the addition of an Advertising Duty would – because it would necessitate a shift from a *reactive* mindset (“we deal with individual requests on a case by case basis, if/when they arrive”) to a *proactive* mindset (“we have a clear and transparent organisational strategy on flexible working, which we communicate in advance to all existing and prospective employees, including before joining the organisation”).

An Advertising Duty would put employers in the position of having to develop and communicate in advance, in broad terms, their strategies around flexible working. This, along with pay and other benefits, is a key factor in people’s decision-making when seeking employment; it is part of how both parties to the employment contract achieve a ‘good fit’.

The shift to a *proactive* mindset around flexibility is also likely to be an important step towards a more gender-equal workplace culture, because it would move the focus away from individual employees (often women, sometimes men, with caregiving responsibilities) *troubling the status quo*, and towards employers *setting their stall out* for all to see (in other words, making transparent the extent of their acceptance of, and interest in supporting, ALL employees’ juggling of work and domestic commitments, regardless of their gender). A study backed by the Government’s own Behavioural Insights Team found that including information about flexible working in job advertisements led to a third more women being hired for senior positions<sup>2</sup>.

Proactive mindsets on flexible working matter for men as well as women: we know that fathers, like mothers, want more access to flexible working arrangements – but are less likely to achieve these.

The Government’s Work Life Balance Employee survey (now discontinued) allows us to observe trends in flexible working by fathers. From the early to mid-2000s, the percentage of fathers working flexitime rose from 20% to 33%, with home-working up

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<sup>1</sup> <https://www.tuc.org.uk/news/one-three-flexible-working-requests-turned-down-tuc-poll-reveals>

<sup>2</sup> <https://www.weforum.org/agenda/2020/12/zurich-flexible-working-women-diversity/>

from 6% to 28%, compressed-week-working from 5% to 15%, and term-time working from 8% to 13%. When the survey was re-run early in 2011, 48% of fathers with dependent children were working flexibly: fewer – but not substantially fewer – than the 59% of mothers who were doing so. The relatively narrow gender gap may in part be due to flexibility being available to more fathers than mothers because it is more available to people with higher qualifications, higher skilled jobs and who work in male-dominated industries. Low-income fathers have less access to flexible working options.

Our Nuffield Foundation-funded study *Lockdown Fathers: The untold story* found that three-quarters (76%) of a nationally representative sample of partnered fathers who spent the spring 2020 lockdown full-time at home, said they wanted to work more flexibly in future, with 63% hoping to work more from home<sup>3</sup>.

However, fathers' requests for flexible working are refused by employers at almost twice the rate of mothers'. Fathers are also twice as likely as mothers to fear that asking for flexible working will damage their careers. Nevertheless, surveys have found substantial proportions of fathers (between 18% and 30%) requesting flexible working for childcare needs or to spend more time with their family. It is also worth noting that fathers may be underrepresented in such figures because men are far more likely than women to work flexibly 'under the radar'.

While men's lower propensity to make flexible working requests is often assumed to result from lack of interest, there are in fact many other likely explanations.

Fathers in partner-couples are much more likely than their wives/ partners to be the main or sole earner, to work longer hours and to have longer commutes; this may engender a particular reluctance among fathers on whom the family's financial security depends, to 'rock the boat' with their employer by taking the risk of making a flexible working request<sup>4</sup>.

But gendered workplace cultures may also contribute to men's reluctance. Even organisations with clear flexible working policies may not actively and effectively promote these to men. Employers', line managers' and workers' attitudes and behaviours may be influential: traditionalist views that position as men as providers and women as caregivers, and an emphasis on demonstrating high work orientation through long hours working, are common. Arranging working hours to fit around caregiving commitments may be viewed as more acceptable for female than for male workers. A study that used a 'vignette' method to assess managers' attitudes to fictitious fathers and mothers with equivalent skills and qualifications seeking part-time employment, found the fathers regarded with greater suspicion and judged less committed to their work<sup>5</sup>.

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<sup>3</sup> Burgess, A. & Goldman, R. (2021) *Lockdown Fathers: the untold story* (full report). Contemporary Fathers in the UK series. London: Fatherhood Institute <http://www.fatherhoodinstitute.org/wp-content/uploads/2021/05/Lockdown-Fathers-Full-Report.pdf>

<sup>4</sup> Burgess, A. & Davies, J., (2017). *Cash or Carry? Fathers combining work and care in the UK* (Full Report). Contemporary Fathers in the UK series. Marlborough: Fatherhood Institute <http://www.fatherhoodinstitute.org/wp-content/uploads/2017/12/Cash-and-carry-Full-Report-PDF.pdf>

<sup>5</sup> <https://pearl.plymouth.ac.uk/handle/10026.1/14676>

A recent study using data from *Understanding Society*, the UK Household Longitudinal Survey, found that almost a third of fathers believed flexible working arrangements that reduce working hours are unavailable to them, compared with one-tenth of mothers<sup>6</sup>. Fathers with lower education levels, in lower status occupations, working in the private sector and in workplaces without trade union presence were more likely to believe that FWAs are unavailable.

When fathers do attempt to work flexibly, they, like mothers, face challenges. A poll of 3,000 working parents found that one in ten fathers had quit a job after having a flexible working request turned down; one in five with flexible arrangements felt discriminated against by their managers and co-workers, and a quarter said their line manager did not understand the pressures of juggling work with family life<sup>7</sup>.

*A Day 1 Right to Request Flexible Working plus Advertising Duty* could help break down differential take-up of flexible working, nudging employers to make transparent what kinds of flexible working arrangements might be possible for particular roles, and define where such arrangements are not available (with suitable justification) – and communicate this *to the entire workforce, including men*, rather than just considering individual requests from (mostly female) employees when they come up.

An additional Duty to Report annually, by gender and parental status (children aged 11 and under), the number of flexible working requests made and granted – initially by companies with 250+ employees (as for Gender Pay Gap reporting) – would enhance employers' focus on this issue.

Finally, failure to support fathers who can work flexibly (in time or location) damages children and is costly for government: A very large UK study found that children whose fathers had no access to flexible working when they were born, exhibited more emotional and behavioural difficulties at age three<sup>8</sup>.

**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.**

Yes

**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.**

Don't know.

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<sup>6</sup> Cook R, O'Brien M, Connolly S, Aldrich M, Speight S. Fathers' Perceptions of the Availability of Flexible Working Arrangements: Evidence from the UK. *Work, Employment and Society*. November 2020. doi:10.1177/0950017020946687

<sup>7</sup> <https://www.peoplemanagement.co.uk/news/articles/fathers-struggle-to-get-flexible-work#gref>

<sup>8</sup> Dex S. ard, Ward K. (2007). *Parental Care and Employment in Early Childhood*. Working Paper Series No 57 Manchester: Equal Opportunities Commission <http://www.fatherhoodinstitute.org/uploads/publications/257.pdf>

**12/13.** Our focus is on the need for employers to develop and promote transparent policies on the availability of flexible working arrangements. We leave it to others to define how best to ensure that employers justify their reasoning for not making such arrangements available.

**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?**

Don't know.

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

As outlined in Question 11-13 above, our focus is on the need for employers to develop and promote transparent policies on the availability of flexible working arrangements. We leave it to others to define how best to ensure that employers justify their reasoning for not making such arrangements available.

**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?**

Don't know

**17. Please give reasons for your answer**

As outlined in Question 11-13 above, our focus is on the need for employers to develop and promote transparent policies on the availability of flexible working arrangements. We leave it to others to define how best to ensure that employers justify their reasoning for not making such arrangements available.

**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?**

Yes

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

In practice, most workers would not need to make several requests as they will have thought their situations through carefully before making a request. However, there should be no limits on the number of times workers can make flexible working requests. One application in 12 months may be impractical given that workers may experience multiple life changes during a year that they may need to respond to. For example, changes to caring requirements or health conditions may require existing arrangements to be altered or new flexible working arrangements to be put in place.

The ability to request more than once in a year would also allow workers to respond to changing circumstances within an organisation, for example to increase their own hours where another team member has reduced theirs or a request to remote work as technological changes occur in a company. The current situation where workers are effectively locked out of making flexible working requests for a year following a request could in no way be described as facilitating default flexibility.

If an employer has assessed which types of flexibility are possible within a particular role (as would be the case under an advertising duty) it will be far easier for them to deal with multiple requests in a 12-month period.

**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?**

Yes

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

Yes, employers should be required to respond to flexible working requests much faster than they currently do. A three month wait time is impractical for workers to be able to plan their lives as some changes will need to be met quickly, for example those involving an immediate health issue.

**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?**

There should not be a limit on the number of requests an individual can make.

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

Currently employees, if a request is accepted, are locked into a contractual change for a 12-month period with no opportunity for review or amendments. Workers' circumstances can change over time, and sometimes at short notice. Allowing multiple requests would recognise this – and if employers have developed a clear flexible working strategy that anticipates the availability or non-availability of particular flexible working arrangements by role or business area (as would be the case if there were an advertising duty) this should make the process of considering an individual's multiple requests relatively straightforward.

**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?**

Less than two weeks

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

We would suggest a total timescale of a month for employees to receive a decision. Employers would be required to set up a meeting with the employee to discuss their request, within 2 weeks – and to provide a final decision in writing with explanation within 2 weeks of that meeting.

This quicker approach would be made easier if the government introduced an advertising duty, because this would nudge the employer to have thought upfront about any flexibility that might be accommodated in the role, thus making the decision easier.

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

Yes

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

A faster and more transparent process for reviewing flexible working requests, as outlined above, would encourage workers to make time-limited requests. Workers are currently unlikely to ask for time-limited flexibility as they must wait three months for a response.

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

We would welcome a call for evidence on 'ad hoc' and informal flexible working and would be happy to work with BEIS to ensure that this is done in a way that enables gender differences, and differences relating to employees' caring responsibilities, to be captured and explored. This should include research into the detail of whether and how organisations accept, develop and promote flexible working arrangements specifically for men as well as women – including, for example, whether and how male and female employees' parental status is acknowledged and recorded, and how this information is used to inform the development, promotion and measurement of flexible working policies and decision-making.