

Section 10 (para 10.9) Local Conditions of Service (working time)–Part 3

10.9 FLEXIBLE WORKING

10.9.1 REQUESTING FLEXIBLE WORKING

10.9.1.1 This paragraph (10.9) applies to all employees with 26 weeks continuous service with the Council including those who have the statutory right to request flexible working made under section 80F of the Employment Rights Act 1996 (as amended).

10.9.1.2 Employees who do not have 26 weeks continuous service can still make a flexible working request but such requests will not be considered under the Councils local procedure. Such requests will be considered by the employees designated manager and will be given serious consideration. Where it is impractical to agree to flexible working because of the impact on the service provided, then the manager will clearly explain the reasons for refusal to the employee.

10.9.1.3 Where the Council cannot accommodate all requests for flexible working made under the Councils local procedure, priority will be given to those who have a statutory right to request.

10.9.1.4 Eligibility

- Be an employee
- Have worked for the Council for 26 weeks at the date the application is made
- Have not made another application to work flexibly during the past 12 months within the same post*

*In exceptional circumstances (e.g. where the employees circumstances have changed), requests will be considered within the 12 month period and within the same post but such requests will not be considered using the Councils local procedure.

10.9.1.5 Requests

Eligible employees can request to:

- Change the hours they work
- Change the times when they are required to work or
- Work from home

Flexible working could include part-time work, flexitime, job-sharing, changes to shift work, shift swapping, self rostering, time off in lieu, unique working patterns, working at home, compressed hours, annualised hours, staggered hours, term-time working and career breaks.

10.9.2 Procedure for requesting the Right to Request Flexible Working

10.9.2.1 Representatives of the Human Resources Department are available for advice at all stages of the process.

10.9.2.2 The Application

An application must:

- Be in writing (using a flexible working request form)
- Specify the flexible working pattern applied for
- Explain what effect, if any, the employee thinks the proposed change would have on the service and how, in their opinion, any such effect might be dealt with
- State the date on which it is proposed the change should become effective
- State whether a previous application has been made to the Council and, if so when it was made
- Be dated.

10.9.2.3 If the employee does not provide all the required information the manager must inform the employee what has been omitted and ask them to resubmit the application when complete. The manager must also inform the employee that they are not obliged to consider the application until it is complete and resubmitted. Any application is regarded as being dated as the date that it is received by the designated manager or equivalent.

10.9.2.4 Should the Council approve the application, the variation in contractual terms may be permanent or for a specified time period only. Should a permanent change be requested and agreed the employee has no automatic right to change back to their previous pattern of work. A trial period may however be agreed (see paragraph 10.9.2.15).

10.9.2.5 The manager will have 28 days after the day they receive the application to either agree to the request or arrange a meeting to discuss the application in accordance with the procedure as set out below.

10.9.2.6 The meeting

- The manager must hold a meeting to consider the request within 28 days of receiving the application.
- The employee may be represented by a work colleague or trade union representative at the meeting who will be permitted to speak on their behalf
- The manager must write to the employee advising them of their decision within 14 days after the date of the meeting.

10.9.2.7 The meeting will provide the manager and the employee with the opportunity to discuss the employee's desired working pattern in depth and to consider how it might be accommodated. A successful outcome will be

assisted if both the manager and the employee are prepared to be flexible. If the original working pattern cannot be accommodated, the meeting will provide an opportunity to see if an alternative working arrangement may be appropriate. Where it is in the interests of both parties a trial period can be agreed to see how the new pattern suits them both (see paragraph 10.9.2.15).

10.9.2.8 Where a trade union representative or work colleague chosen by the employee to represent them at the meeting cannot attend on the date proposed, an alternative date may be arranged. This should normally be within five working days, beginning with the first working day after the original date proposed by the manager.

10.9.2.9 The meeting would not normally be postponed a second time if the trade union or work colleague were again unavailable.

10.9.2.10 In making a decision the manager must have regard to any relevant conditions of service.

10.9.2.11 Following the meeting the manager must notify the employee of the decision in writing. This must be done within 14 days of the date of the meeting.

10.9.2.12 Outcome of the meeting

10.9.2.13 Notification of the outcome of the meeting will either:

- Accept the request and establish a start date and any other action or
- Confirm an alternative agreed at the meeting or
- Reject the request and set out clear business reasons for the rejection together with notification of the appeals process

10.9.2.14 If the request is accepted or alternative agreed the notification (using the application acceptance form) must:

- Include a description of the new working pattern
- State the date from which the new working pattern is to take effect
- Be dated

10.9.2.15 Where the parties agree there should be a trial period of the new working pattern the manager will make a final decision on the application within 14 days of the end of the trial period. The manager must notify the employee of this final decision, using an application acceptance form or application rejection form as appropriate.

10.9.2.16 There will be circumstances where, due to organisational reasons, the manager is not able to accept the request. In this case the application rejection form should be used for refusing the request. In these circumstances the Council will state in writing:

- The organisational reasons why the request cannot be accepted

- Provide an explanation of why the organisational reasons apply in the circumstances
- Set out the appeal procedure and
- Ensure the written notice is dated

10.9.2.17 An application can only be refused where there is an organisational reason. The organisational reason for refusing an application must be from one of the following:

- 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 and/or performance
- Insufficiency of work during the periods the employee proposes to work
- Planned structural changes

10.9.2.18 In addition to providing an organisational reason the manager must include an explanation about why the organisational reason applies in the particular circumstances.

10.9.2.19 Appeal process

10.9.2.20

- An employee has 14 days to appeal in writing (using the flexible working appeal form) after the date of the manager's decision. The appeal must include the grounds of appeal, any relevant documentation and be dated.
- If an appeal is made the manager must arrange an appeal meeting to take place within 14 days after receiving the notice of the appeal. The appeal should be heard by the next level of manager (usually Service Head) to the manager who considered the original request.
- The employee will have the right to be represented.
- The manager may invite a representative from Human Resources to attend the meeting in an advisory capacity.
- The manager who hears the appeal must inform the employee of the outcome of the appeal in writing within 14 days after the date of the meeting (the appeal reply form should be used for this purpose).

10.9.2.21 If the appeal is upheld the written decision must:

- Include a description of the new working pattern
- State the date from which the new working pattern is to take effect and
- Be dated

10.9.2.22 If the appeal is dismissed the written decision must:

- State the reasons for the decision. These will be appropriate to the employee's own grounds for making the appeal.
- Provide an explanation as to why the reasons for refusal apply in the circumstances. The same principles as to what is a sufficient level of explanation following the initial meeting, will apply to the appeal.
- Be dated

10.9.2.23 The appeal decision will be final.

10.9.2.24 Employees cannot generally raise a grievance to complain about or object to the fact that the request has been refused. The only exception would be if the grievance is that the reason for refusal amounts to unlawful discrimination or that the true reason is not the reason given.

10.9.2.25 Extensions to time limits

10.9.2.26 There may be exceptional circumstances when it is not possible to complete a part of the procedure within the specified time limit. An extension of time can, therefore, be agreed by the manager and the employee. A written record of the agreement must be kept by the manager.

10.9.2.27 The written record must:

- Specify what period the extension relates to
- State the date the extension is to end
- Be dated and
- Be sent to the employee

10.9.2.28 Applications treated as withdrawn

10.9.2.29 There may be occasions when an application is treated as withdrawn. In all circumstances a written record must be kept. The notice of withdrawal form can be used for this purpose.

10.9.2.30 There are three reasons why an application may be treated as withdrawn:

- The employee decides to withdraw the application.

An employee who withdraws their application will not be eligible to make another application for 12 months from the date their application was made (within the same post). Where the employee decides to withdraw their application, they should notify their manager in writing as soon as possible. A manager who is informed verbally that the application is withdrawn by the employee but does not subsequently receive written confirmation should contact the employee to confirm their intentions. Where the manager does not receive confirmation from the employee, the manager should confirm the withdrawal in writing.

- The employee fails to attend two meetings

Where the employee misses two meetings without reasonable cause, the manager may treat the application as withdrawn.

- The employee unreasonably refuses to provide the employer with the required information

There may be occasions where the manager is willing to accept a request for flexible working but requires the employee to provide them with certain information before they can do so. If the employee unreasonably refuses to provide the manager with the information, then the manager can treat the application as withdrawn.

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Procedure Flowchart

Making a request for flexible working

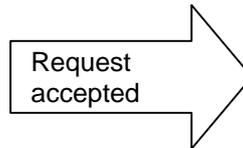
An application for flexible working is received



Arrange a meeting with the employee to discuss the application



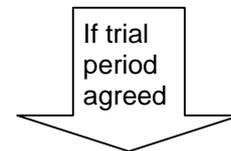
Write to the employee to provide formal notice of your decision



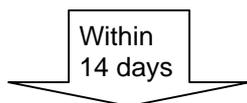
make arrangements for implementing new working pattern



Employee has the right of appeal within 14 days of receiving notification



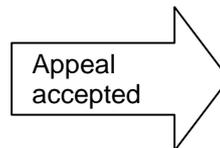
write to employee 14 days after the end of the TP to confirm final decision



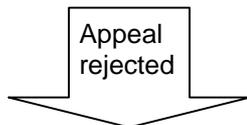
Meet with the employee to discuss the appeal



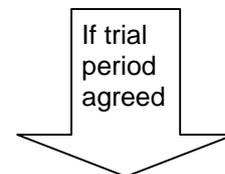
Write to the employee notifying outcome of the appeal



make arrangements for implementing new working pattern



Decision final



write to employee 14 days after the end of the TP to confirm final decision