

FLEXIBLE WORKING POLICIES NASUWT CHECKLIST

COMMENTARY FOR NASUWT REPRESENTATIVES

This commentary has been prepared by NASUWT for use by NASUWT Representatives as the basis for discussions with employers in Scotland to agree the policy and procedure for managing flexible working requests within schools and colleges.

For ease of reference, the commentary replicates exactly each of the sections of the NASUWT Checklist and provides the Union's commentary under each section (in blue shaded boxes) on the key issues to be considered when seeking to agree the policy.

The Union's recommended negotiating position is indicated at the end of each section.

PURPOSE OF THE CHECKLIST

NASUWT believes that a fair, transparent and consistent flexible working policy, which treats teachers as highly skilled professionals, is an essential policy in a school or college suite of policies.

Flexible working makes a positive contribution to the workplace by supporting employees in achieving a better work/life balance. Flexible working policies which accord with the provisions in this checklist will help to recruit, retain and motivate teachers, provide the basis for sound financial and personnel planning within schools/colleges and minimise the risk of grievance and discrimination.

A flexible working policy is necessary to ensure fairness and consistency in the treatment of all employees making a request for flexible working. It should set out the flexible working procedure that will be followed by the employer so that all those wishing to request flexible working are aware of the processes involved.

The Checklist below sets out the minimum requirements for an effective flexible working policy and is entirely consistent with the [Acas Code of Practice](#) and relevant legislation.

NASUWT Commentary:

The NASUWT Checklist is compliant with the Acas Code of Practice which represents 'best practice'. Policies which do not comply with this could be viewed negatively at an Employment Tribunal.

There is a significant body of [evidence](#) which shows that flexible working arrangements deliver positive benefits, such as increased productivity, a more motivated and committed workforce, less absenteeism, greater employee engagement, better employee relations and greater diversity among the workforce.

Indeed, the Scottish Government has committed within the [Fair Work Plan](#) to promote flexible working, including promoting existing and new advice and guidance on the benefits of flexible working to organisations across Scotland, by working with public bodies to assess provision and highlight best practice, as well as supporting organisations in Scotland to adopt flexible working practices that benefit employers and employees.

In addition, offering flexible working can help teachers adjust to different stages of their life, such as those with caring responsibilities and those looking to plan a phased retirement.

KEY ELEMENTS OF A FLEXIBLE WORKING POLICY

Flexible working policies acceptable to NASUWT will have the following provisions:

- the policy applies to all employees from day one of employment;
- the policy recognises that all employees have the legal right to make two requests for flexible working in any 12-month period;
- the policy will operate in accordance with the duties to promote equality, to eliminate discrimination and to promote good relations between staff with protected characteristics as required under the Equality Act 2010; and
- the policy defines flexible working (i.e. job sharing, working from home, part-time, compressed hours, flexitime, annualised hours, staggered hours and phased retirement).

NASUWT Commentary:

The policy should make it clear that all employees have the day one right to make two requests for flexible working annually.

The Equality Act 2010 places a duty on employers to promote and monitor equality and to eliminate discrimination, and a statement to this effect is important in ensuring this duty is met. This is significant when decisions are made about flexible working and practice.

In addition, it will be important to monitor and evaluate the impact of flexible working policies.

A robust system for monitoring and evaluating the impact of the flexible working policies on an annual basis, specifically in respect of the number of informal and formal requests, as well as successful and unsuccessful appeals, including by those with protected characteristics, should ensure that equal opportunities are promoted and reduce the potential for claims against the employer.

NASUWT Representatives should argue for schools/colleges to monitor attrition rates and whether or not staff are leaving because of a lack of flexibility, including utilising exit interviews as a means of gathering data.

As employees have the legal right to request flexible working, policies should make it clear that a request for flexible working is something that the employee chooses, rather than the employer.¹ A statement to this effect is therefore important within any flexible working policy, to ensure that this is not seen as something that is imposed by the workplace/school because it happens to fit their needs in any given academic year.

The list below is not exhaustive, but is illustrative of the different types of flexible working:

- Part-time working: working less than full-time hours over a set number of days (usually less than the normal working week).
- Job sharing: a form of part-time working where two (or occasionally more) people share the responsibility for a job between them.
- Flexitime: allows employees to choose, within certain set limits, when to begin and end work.
- Compressed hours: working full-time hours but over fewer days.
- Annualised hours: the employee has to work a certain number of hours over the year, but they have some flexibility about when they work. There are sometimes 'core hours' which the employee regularly works each week, and they work the rest of their hours flexibly or when there is extra demand at work.
- Staggered hours: the employee has different start, finish and break times from other workers.
- Working from home on a regular basis: it might be possible to do some or all of the work from home, or anywhere else other than the normal place of work.
- Phased retirement: the default retirement age has been phased out and older workers can choose when they want to retire. This means they can reduce their hours and work part time.

It is important that employers do not try to limit the options available within the policy as this restricts their ability to agree to requests that are made. This should include working with NASUWT Representatives to give consideration to alternative forms of flexibility and in-year flexibility.

¹ <https://www.gov.uk/flexible-working>

NASUWT Representatives should be alert to the need to cross-reference to other policies (i.e. pay and appraisal) and any other relevant national terms and conditions (e.g. the Scottish Negotiating Committee for Teachers Handbook – SNCT) and the provisions contained within. For example, Part 2 Section 3 of the SNCT Handbook sets out the working year and working week calculations for part-time workers.

Outwith SNCT terms and conditions, it will be important to identify the agreed calculations which are used to calculate the hours that a part-time worker who has requested flexible working is expected to work as a proportion of a full-time equivalent.

TIMESCALES

The policy will confirm that:

- an employee can make two requests for flexible working in any 12-month period;
- decisions regarding a request (i.e. accepting, accepting with modifications, or rejecting) will be communicated to the employee, in writing, no later than 28 days after the request was made; and
- that the whole process, including any appeal, must be concluded within two months of a request being made.

NASUWT Commentary:

NASUWT Representatives should press for there to be timescales within the policy that are clear and agreed so that decisions and any subsequent appeals can be confirmed within the statutory two-month timescale. It is important to note that any timescales should refer to 'working days'.

It is important for NASUWT Representatives to make sure that any variation to dates and timescales are mutually agreed and should only occur in exceptional circumstances involving complex cases.

NASUWT Representatives should ensure that the policy provides agreed timescales for the conclusion of one 'live' request before another can be made in any 12-month period.

PROCEDURE

The procedure will confirm that:

- applications for flexible working will be considered on their merits on a case-by-case basis;
- a flexible working request should be made in writing, signed and dated, and should include reference to the following:
 - whether this is a non-statutory or statutory request;
 - the change being requested to working arrangements and the date when this would come into effect;
 - a statement saying if, and when, any previous application was made; and
 - a statement saying whether they are making the request in relation to the Equality Act 2010 (e.g. as a reasonable adjustment for a disability);
- there is no requirement for an employee to explain what effect agreeing to a flexible working request would have on the school/college and how any such effect might be dealt with;
- an employee can only have one 'live' request for flexible working at any one time in a 12-month period, which can remain 'live' until one of the following occurs:
 - a decision is made regarding the request;
 - the request is withdrawn;
 - the employer and employee mutually agree an outcome; or
 - the statutory two-month period for deciding the request ends, including any appeal process, or any agreed extension period ends;
- the employer has to give serious consideration to all requests for flexible working in a 'reasonable manner';
- if the employer accepts the request, they must write to the employee notifying them of the variation to their contract (e.g. working hours and pay) and that this is a permanent change to their terms and conditions;
- if the employer wishes to discuss alternative arrangements or is considering refusing the request, then they must consult with the employee before making a decision at a consultation meeting which provides for a reasonable discussion and consideration of the request, including the option of a trial period for any modification/alternative arrangement;
- an accurate written record of any meetings will be retained and circulated to all those involved; and
- if a request is refused, the employer will provide, in writing, the reasons for rejecting the flexible working request, including the process for any appeal.

NASUWT Commentary:

NASUWT Representatives should ensure that employers do not refuse a request because there was insufficient information provided within an application. Representatives should therefore ensure that there is a section which makes it clear that the employer will request all the agreed information from the outset. NASUWT Representatives should push for the policy to make clear that any missing information should be requested and that any timescales will not be affected because something is missing from the initial request.

NASUWT Representatives must ensure that policies do not require unnecessary information. There is no requirement for this and it could result in further work for the applicant.

It is important to note that the changes brought in from April 6 2024 mean that those making a flexible working request no longer have to explain what effect they think agreeing to their request would have on their school/college, including their colleagues, and how any such effect might be dealt with.

Although providing this information might enhance the chances of a successful application, NASUWT Representatives should ensure that flexible working policies do not place an expectation on this being provided as part of a statutory request.

When considering a request, the statutory process is clear that any request should be considered in a 'reasonable manner' that weighs up the benefits for the employee against any possible adverse impact on the school/employer. This should be done on a case-by-case basis that considers the possible impact of refusing a request on the employee.

NASUWT Representatives must ensure that there is a robust mechanism for the employer to consult with the employee if it wishes to discuss alternative arrangements or is considering refusing the request. This should take place at an agreed date and time as soon as reasonably practicable, and should provide a reasonable discussion and consideration of the request, including the opportunity to ensure all the relevant information is understood, as well as the opportunity to discuss any potential modifications or alternative arrangements.

NASUWT Representatives should ensure that adequate time is provided to allow for someone to prepare for the consultation meeting, including discussing this beforehand with a trade union representative.

In addition, the policy should contain provisions to allow for trade union representation at the meeting, as referenced in the [Acas Code of Practice](#).

The inclusion of the requirement to hold a consultation meeting means that employers cannot dismiss requests without due consideration, as this could be subject to legal challenge.

NASUWT Representatives should ensure that an accurate written record of any discussions is retained and circulated to all those involved, as well as maintaining that any decisions are conveyed in writing so that all involved are made clear about the changes and that this is a permanent contractual variation with associated changes to hours worked and pay, unless otherwise expressly stated.

The policy should make it clear that the employer can only refuse a request for flexible working for one or more of the following eight business reasons:

- the burden of additional costs;
- an inability to organise work amongst existing staff;
- a planned structural change to the school/college;
- a detrimental effect on the ability to meet customer demands;
- a detrimental impact on performance;
- a detrimental impact on quality;
- insufficient work for the periods the employee proposes to work; and
- an inability to recruit additional staff.

Claims that flexible working will have a detrimental impact on quality, based on concerns over exam results, should be challenged. The Union has produced detailed advice and guidance to assist NASUWT Representatives when challenging such assertions, which can be found [here](#).

Schools/colleges should be reminded that their decisions may be the subject of much more detailed scrutiny at the appeal stage, or at an Employment Tribunal.

REPRESENTATION

The policy will confirm that:

- employees will have the right to be accompanied at both informal and formal stages, including the consultation meeting; and
- employees must be allowed to be accompanied by a trade union representative at the appeal stage of the policy.

NASUWT Commentary:

This represents good practice and is underpinned by the [Acas Code of Practice](#). NASUWT Representatives must ensure the flexible working policies advise employers of the need to inform those making a request that they can be accompanied by their trade union representative.

The right to be accompanied assists resolution at its lowest level, without recourse to other procedures (e.g. grievance). It also assists employees in effectively articulating their views, particularly during the consultation meeting.

NASUWT Representatives should remind employers that they should have the opportunity to meet with the member beforehand to discuss the details of their flexible working request, and that adequate time should be provided for this.

APPEALS

- The policy must include provisions for employees to appeal against any formal decision made in accordance with the appeals procedure within the policy which meets, as a minimum, the statutory requirement on dispute resolution.
- Appeals should be dealt as soon as reasonably practicable by someone who is appropriately trained to deal with the appeal in an impartial and objective manner, and, as far as possible, by an individual who has had no previous involvement in the case.
- The policy should confirm that the individual dealing with the case has sufficient authority to make a decision.
- The policy should confirm that an accurate written record of the appeal hearing will be retained and circulated to all those involved.
- The policy should confirm that those hearing the appeal will write to outline what has been decided and why.

NASUWT Commentary:

This represents good practice and is in accordance with the [Acas Code of Practice](#) in relation to flexible working.

As the whole process must be concluded within two months, NASUWT would expect that appropriate timescales for an appeal are referred to.

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

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

NASUWT Representatives should ensure that any date provided for an appeal is convened at a mutually convenient time for all those involved. They should also provide adequate opportunity for both parties to present their case, ask questions and call witnesses (where appropriate). NASUWT Representatives should use the reference to the fact that someone with sufficient authority deals with the appeal to ensure that this is dealt with appropriately and not just placed onto Line Managers who do not have any such delegated authority.

The policy should make it clear that an accurate record of the appeal will be retained and circulated to all those involved.

TRAINING

- The policy should commit the employer to ensure that managers dealing with flexible working requests are properly trained for the task, familiar with the procedures and knowledgeable about how to deal with a request for flexible working.

NASUWT Commentary:

The policy should make it clear that managers involved in dealing with flexible working requests should be appropriately trained so that they have the requisite knowledge and are familiar with the process involved in making a flexible working request. This ensures that flexible working requests are given due diligence rather than being inappropriately dismissed.

This represents good practice and is in accordance with the [Acas Code of Practice](#) in relation to flexible working.

MONITORING AND REVIEW

The policy will:

- confirm that individual records will be treated as confidential;
- be monitored to ensure consistency of application and adherence to equalities legislation;
- be subject to an equality impact assessment; and
- be annually reviewed and monitored, in respect of requests and outcomes, by the relevant body in conjunction with recognised trade unions.

NASUWT Commentary:

It is important that policies are regularly reviewed, in consultation with trade unions, to ensure that they are fit for purpose and up to date. NASUWT Representatives should reference the Scottish Government's commitment to build a [Fair Work](#) nation and the fact that the Fair Work Action Plan emphasises the need to monitor and evaluate the impact of flexible working policies, including in regards to those who are less likely to access Fair Work, such as women, disabled people and racialised minorities. Any such evaluation should be shared with trade unions.

NASUWT Representatives should ensure that flexible working policies make it clear what system is in place for monitoring and evaluating the impact of the flexible working policies on an annual basis, specifically in respect to the following:

- the number of informal and formal requests, including if individuals are making one or two statutory requests in a 12-month period; and
- the number of successful and unsuccessful appeals, including by those with protected characteristics.

NASUWT Representatives should also argue for schools/colleges to monitor attrition rates and whether or not staff are leaving because of a lack of flexibility, including utilising exit interviews as a means of gathering data.

An equality impact assessment of the policy should ensure that the school/college promotes equality and does not discriminate against teachers with particular protected characteristics as defined under the Equality Act 2010, including:

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



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