



Flexible Working Policy

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1. Aims and Objectives

- 1.1. The Trust recognises that colleagues may wish to request flexible working arrangements for a variety of reasons and is committed to facilitating and exploring such opportunities where these can be reasonably accommodated by the Trust, in order to achieve our commitment to improving the health and wellbeing of all of our colleagues.
- 1.2. The purpose of this policy is to inform colleagues of the options, the conditions of eligibility and the application process and to provide managers with the framework for decision making to ensure a fair and robust process is applied.

2. Scope & Eligibility

- 2.1. Every directly employed NHS employee has a contractual right to ask to work flexibly, for any reason, from day one of NHS employment. The right is designed to meet the needs of both colleagues and the Trust and aims to facilitate discussion and encourage both the colleague and the Trust to consider flexible working arrangements and to find a solution that suits both.
- 2.2. All posts should be considered for flexible working unless there is a clear demonstrable operational reason why this is not practicable. There should be no arbitrary barriers and managers and colleagues should aim to reach a mutually beneficial outcome. This does not however provide colleagues with an automatic right to work flexibly.
- 2.3. Flexible working is a permanent variation to a colleague's terms and conditions in respect of working hours, working time, or work location, unless agreed otherwise. The Trust is supportive of temporary or fixed term changes, where the need arises, and consideration may also wish to be given to the Trust's Agile Working Policy in these situations.
- 2.4. The Trust recognises there may be occasions when urgent domestic, personal, and family matters compete with work responsibilities. The Trusts [Special Leave Policy & Procedure](#) covers emergency arrangements.

3. Definitions

- 3.1. **Flexible working options** - Options under which colleagues may choose to apply for flexible working include, but are not limited to:
 - Reduction in hours
 - Compressed Hours
 - Flexitime
 - Term Time Working
 - Annualised Hours (See [Annualised Hours Procedure](#))

- Home Working
- Flexible Retirement (See [Retirement Policy](#))
- Job Share
- Change of Work Location (See Transfer Procedure)
- Fixed Shifts

4. Principles

- 4.1. All requests will be given full consideration. Requests to work flexibly will only be declined where there is a clear and recognised business need to refuse. In such cases colleagues will receive a full reasoned response, in writing, within the statutory timeframe.
- 4.2. In considering a request or withdrawal of an agreement, the Trust will not discriminate unlawfully against the colleague. The Trust will consider flexible working options as part of their duty to make reasonable adjustments under the *Equalities Act 2010*, and the procedure outlined within this policy will be applied.
- 4.3. Where a request for a permanent change to a colleague's working arrangements is requested, the Trust reserves the right to put in place a trial period, the length of which will be at the manager's discretion but will normally be between three and six months, to establish whether the new working arrangements meet service needs and suit the needs of the colleague. Once the line manager approves the application where any variation in contractual terms is permanent, the colleague has no automatic right to change back to the previous working pattern.
- 4.4. Agreeing to one request will not set a precedent or create the right for another colleague to be granted a similar change to their working pattern/ location. When a manager receives request from more than one colleague, they are not required by the law to make value judgements about the most deserving request. The request will be dealt with in the order they are received.
- 4.5. The Trust reserves the right to review flexible working arrangements at a minimum on an annual basis to ensure they are still working for both the colleague and the Trust and cannot be changed without further agreement between the Trust and the colleague and/or consultation.
- 4.6. All flexible working agreements should be in adherence with the Trust's [Working Time Directive Policy](#) and [NHS terms and conditions of service \(Agenda for Change\) | NHS Employers](#).
- 4.7. A change in hours will result in adjustments to contractual terms and conditions such as annual leave entitlement, salary, and pension.

- 4.8. Regardless of the type of flexible working arrangement, colleagues will be required to complete all statutory and mandatory training and update training as and when required by the Trust and maintain professional registration/licence requirements, where applicable.
- 4.9. The Trust cannot guarantee that flexible working arrangements can be transferred. Any colleague who applies for another post within the Trust would be doing so at the hours/conditions agreed at the recruitment stages. Any colleague subject to redeployment or reorganisation will need to raise and discuss at their 1:1 meetings.
- 4.10. Employees have a right to be accompanied by a Union Representative/Partner or workplace colleague at all formal flexible working meetings and flexible working appeal hearings.

5. Responsibilities

5.1. Colleague Responsibilities

It is the responsibility of all colleagues to ensure that they:

- 5.1.1. Apply for flexible working arrangements in advance of when they want the change to take place, via a flexible working request form.
- 5.1.2. Think carefully about their desired working arrangement when making an application, providing, a clear plan of how it is proposed that they will work, indicating how work commitments will be met, how this may impact on the team/department and suggestions on how any impact can be addressed. Colleagues may wish to consider agile working arrangements (see Agile Working Policy).
- 5.1.3. Understand that it will not always be possible to agree to flexible working arrangements and be prepared to constructively discuss, with their line manager, alternatives, or changes to their request in order to balance their own requirements with the needs of a service at a particular time.
- 5.1.4. Agree to regular and annual reviews to ensure the pattern of working is still valid and meets the needs of the Trust as well as themselves.
- 5.1.5. Consider the potential impact of a move to flexible working on their pay, pension, and other terms of their contract.
- 5.1.6. Demonstrate flexibility in order to be able to undertake statutory and mandatory training and maintain professional registration/ licence requirements, as applicable.

5.2 Manager Responsibilities

It is the responsibility of all managers to ensure that they:

- 5.2.1. Be supportive and make every effort to accommodate flexible working requests. Consider the request carefully in accordance with section 7, looking at the benefits of the requested changes in working conditions for the colleague and the Trust and weighing these against any adverse business impact of implementing the changes.

Consideration must also be given for duration of trial period, if applicable.

- 5.2.2. Where applications are provisionally approved, escalate to be formally signed off by the relevant Senior Leadership Team.
- 5.2.3. Adhere to the three-month time limit set within the policy unless mutually agreed to extend them with the colleague.
- 5.2.4. Regularly review the flexible working arrangement, as required and as a minimum 12 monthly, as part of the annual Appraisal process, to ensure that they continue to meet service and individual needs.
- 5.2.5. Maintain written records of the application and decision, completing a staff change form to ensure that any contractual and pay arrangements are made accordingly.
- 5.2.6. Manage the termination of flexible working arrangements with HR advice and support.

5.3 Human Resources Responsibilities

- 5.3.1 Provide advice in all aspects of this policy to both colleagues considering making an application and line managers dealing with an application.
- 5.3.2 To monitor the application of the Policy to ensure a consistent approach to decision making.
- 5.3.3 Record all variations to contract onto ESR and confirm the contractual changes in writing to the colleague.

6. Timeframes

- 6.1. All requests, including any appeals, must be considered, and decided on within a period of three months from first receipt by the line manager. A flow chart depicting the stages in the process can be found in Flexible Working Toolkit.

6.2. If for some reason the request cannot be dealt with in a three-month period, extensions to the above timeframes must be mutually agreed between the manager and colleague and confirmed in writing.

7. Assessment Criteria for Flexible Working

7.1. All requests will be carefully considered looking at the benefits of the requested changes in working conditions for the colleague and the Trust and weighing these against any adverse business impact of implementing the changes.

7.2. Managers can decline a request only if there are good grounds for doing so; they should explain these reasons fully in writing. The reasons should fall into one or more of the following statutory grounds for refusal*:

- Burden of additional cost
- Detrimental effect on meeting service user/customer demand
- Inability to re-organise work amongst existing colleagues
- Detrimental impact on quality or on performance
- Insufficiency of work during the proposed work period
- Planned structural change
- Inability to recruit additional staff

*The above grounds for refusal may more fully detailed in the Trust's associated policies/procedures i.e., [Annualised Hours Procedure](#).

7.4. There may be some occasions, when a manager/service area receives more than one request to work flexibly close together from different colleagues. Where this happens, it may be possible to grant all the requests received. However, before doing so the Trust will need to carefully consider the impact this would have on the Trust/team-area of work before coming to a decision.

7.5. Requests should be considered in the order they are received. Having considered and approved the first request the manager should remember that the context has now changed and can be taken into account when considering the second request against the business reasons set out at section 7.

8. Trialling New Working Arrangements

- 8.1. Where there is some uncertainty about whether the flexible working arrangement is practicable, a trial period of a minimum of three and a maximum of six months, will give both the colleague and the manager a chance to establish whether the chosen working arrangement is suitable for both parties before reviewing and taking any decisions on the whether a permanent change can be supported.
- 8.2. Where the flexible working change is agreed on a trial basis, until a specified review date, this will constitute a temporary change to the colleague's terms and conditions.
- 8.3. The colleague will resume their previous working pattern at the end of the temporary period unless a new flexible working arrangement is agreed at the review date.

9. Temporary Period

- 9.1. In some cases, the manager and colleague may conclude that a permanent change to a contract is not the best solution. This might be the case, for example, where a colleague is caring for someone with a terminal illness, or where a child is starting school and is attending for reduced hours for an initial period. Managers may be able to agree short-term flexible working arrangements in such circumstances, clearly outlining the end date and future arrangements.
- 9.2. The colleague will resume their previous working pattern at the end of the temporary period unless a new flexible working arrangement is agreed.

10. Withdrawing an Application

- 10.1. A request to work flexibly can be withdrawn at any time before it has been accepted and any new terms and conditions agreed and put in place.
- 10.2. If a colleague fails to attend more than one meeting arranged to discuss the request and does not provide a reasonable explanation, the Trust may assume that the application has been withdrawn.
- 10.3. The Trust may also treat an application as withdrawn if the colleague does not provide the required information.

11. Review of Flexible Working Arrangements

- 11.1. Flexible working arrangements should be reviewed on a regular basis in line with service and individual requirements, and as a minimum annually

during appraisal to ensure that the flexible agreement is working for both parties. If a trial period has been implemented, this should be reviewed at the end of the agreed period.

- 11.2. The Trust has the authority to alter/withdraw a flexible working arrangement with reasonable notice for a justifiable business need. This must only occur following discussion with the individual and in consideration of their personal circumstances, taking into account the Trust's obligation to act lawfully in accordance with current equality legislation. A mutual agreement between the Trust and colleague should be made where changes to working hours/pattern/location are proposed.
- 11.3. If this cannot be agreed informally, any contractual change would be conducted as a formal change management process, under the [Organisational Change Policy & Procedure \(Including Redundancy and TUPE\)](#), allowing the right for the individual to be accompanied by a Trade Union Representative or workplace colleague. HR advice should be sought where a formal change process is required.

12. Appeals

- 12.1. If a request for flexible working is declined then the colleague may appeal in writing to hremployee.relations@secamb.nhs.uk, within the statutory timeframe, see Section 6. The grounds for appeal should cover one or more of the reasons:
 - Process failure occurring during the application process
 - Evidence of inconsistencies with the decision-making process
- 12.2. The appeal panel will comprise of a, a more senior manager and an HR representative not previously associated to the case and the decision. The decision on the appeal panel is final and no further appeals are permitted.
- 12.3. The colleague is entitled to be represented at the appeal hearing by a Trade Union Representative or workplace colleague.
- 12.4. The decision will be communicated to the colleague, in writing, within seven (7) calendar days.
- 12.5. Where there are concerns surrounding other issues e.g., discrimination, the Trust's [Grievance Policy and Procedure](#) should be applied.

13. Monitoring Compliance

- 13.1. The HR Working Group is responsible for monitoring compliance with this policy.

| Criteria | Measurable | Frequency | Reporting to | Action Plan/Monitoring |
|---|---|-----------|-----------------------|------------------------|
| Application of this policy to be consistently applied to all colleagues | Number of flexible working appeals | Monthly | HR Employee Relations | Director of HR and OD |
| Number of approved applications for flexible working formally made in accordance with the procedure | Monitor the increase in successful applications | Annual | HR Employee Relations | Director of HR and OD |
| Number of non-approved applications for flexible working formally made in accordance with the procedure | Monitor the number of appeals | Annual | HR Employee Relations | Director of HR and OD |
| Uptake of flexible working arrangements | Monitoring of types of flexible working | Annual | HR Employee Relations | Director of HR and OD |

- 13.2. Where monitoring indicates a cause for concern, the accountability for investigation and taking action on any evidence of disadvantage or discrimination will be the relevant Director. Support for investigation and implementing actions will be providing by the HRBP/ER team.

14. Audit and Review (evaluating effectiveness)

- 14.1. All policies have their effectiveness audited by the HR Working Group at regular intervals, and initially six months after a new policy is approved and disseminated.
- 14.2. Effectiveness will be reviewed using the tools set out in the [Trust's Policy and Procedure for the Development and Management of Trust Policies and Procedures](#) (also known as the Policy on Policies).
- 14.3. This document will be reviewed in its entirety every three years or sooner if new legislation, codes of practice or national standards are introduced, or if feedback from colleagues indicates that the policy is not working effectively.

14.4. All changes made to this policy will go through the governance route for development and approval as set out in the Policy on Policies.

15. References

- NHS Terms and Conditions Handbook (Section 33)
- ACAS
- Employment Rights Act 1996
- Equality Act 2010
- Flexible Working Regulations 2014

16. Financial Checkpoint

16.1. This document has been confirmed by Finance to have financial implications and the relevant Trust processes have been followed to ensure adequate funds are available.

17. Equality Analysis

17.1. The Trust believes in fairness and equality, and values diversity in its role as both a provider of services and as an employer. The Trust aims to provide accessible services that respect the needs of each individual and exclude no-one. It is committed to comply with the Human Rights Act and to meeting the Equality Act 2010, which identifies the following nine protected characteristics: Age, Disability, Race, Religion and Belief, Gender Reassignment, Sexual Orientation, Sex, Marriage and Civil Partnership and Pregnancy and Maternity.

17.2. Compliance with the Public Sector Equality Duty: If a contractor carries out functions of a public nature then for the duration of the contract, the contractor or supplier would itself be considered a public authority and have the duty to comply with the equalities duties when carrying out those functions.