

## **Making Flexible Working the Default**

Chartered Society of Physiotherapy

Consultation response

To: [labourmarketparticipation@beis.gov.uk](mailto:labourmarketparticipation@beis.gov.uk)

The Chartered Society of Physiotherapy (CSP) is the professional, educational and trade union body for the UK's 60,000 chartered physiotherapists, physiotherapy students and support workers. Our members work within the NHS, and the wider health and social care landscape.

We welcome the opportunity to respond to the Department for Business, Enterprise and Industrial Strategy's flexible working consultation. Further to this response, we endorse the consultation response & recommendations provided by the Trades Union Congress.

We agree with the government that flexible working should be the default throughout the economy.

Through our routine work, the CSP continues to raise awareness of the benefits of flexible working for staff, employers and patients alike. Organisations that promote flexible working find that it aids recruitment and retention, improves productivity and stress and makes staff feel valued and motivated. Within healthcare, it is not only good for workers and employers but for patients and quality of care.<sup>1</sup>

We also point to the value of partnership working in mainstreaming flexible working. In September 2021 the CSP, other healthcare trade unions, and NHS employers in England and Wales agreed new contractual provisions for flexible working.<sup>2</sup> These provisions were introduced to improve the quality of working life in the NHS and improve staff retention, and go further than current statutory arrangements.

### **1. Current situation**

- 1.1 A considerable 'flexible working gap' negatively impacts our members. There is a persistent mismatch between the number of CSP members wanting, and securing, flexible working arrangements.
- 1.2 A 2021 survey of CSP members asked our members about their future career plans. 37 per cent of respondents indicated they would like to work to flexitime arrangements – including staggered start and finish times – when performing their role. However, only 16 per cent of those respondents that worked in the previous year indicated that they had actually done so on flexitime arrangements.<sup>3</sup>

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<sup>1</sup> See [CSP Building a Better Balance resource](#) for more details.

<sup>2</sup> See [NHS Terms and Conditions Handbook, section 33](#). Referred to as 'the NHS contract' throughout this consultation response.

<sup>3</sup> Nb. this survey was ran before the introduction of new NHS contract, which contained new provisions for flexible working for staff in England and Wales. This flexible working was performed in the context of the Covid19 Pandemic, and it is not known whether the flexible work was conducted on a voluntary- or imposed- basis.

- 1.3 This gap is consistent and persistent when other flexible working arrangements are considered. For instance: 8 per cent of respondents indicated they would like term-time working patterns in the future. However, less than 1 per cent of working respondents indicated they had this opportunity in the past year.

## 2. Consultation gaps

### Monitoring and evaluation

- 2.1 Government should introduce mechanisms to monitor and evaluate employers' flexible working policies and arrangements.
- 2.2 The NHS now requires employing organisations to collect information about flexible working request and outcomes, and publish this information with data broken down by individuals' protected characteristics.
- 2.3 This measure will - in time - provide evidence for trade unions and others to assess whether employers are supporting more flexibility, ensuring equitable access to flexible working opportunities, and able to identify any impacts on career progression and development. The NHS Equality and Diversity Monitoring Group has published guidance on how data should be collected, analysed and reported.<sup>4</sup>
- 2.4 An equivalent measure could and should be introduced to the wider economy: similar to the duty for large employers to publish gender pay gap data.

### Partnership working

- 2.5 Following this consultation, workplace policies and guidance will need to be reviewed to meet any new legislation. Employers should work with trade unions when conducting this necessary work. The NHS Staff Council has recently produced jointly-agreed guidance on how employers and trade unions should work together reviewing flexible working policies.<sup>5</sup>
- 2.6 Beyond trade unions' role in renegotiating and agreeing workplace policies and guidance, good partnership working helps create workplace cultures where flexible working is widely available and the benefits fully understood. As acknowledged in the new NHS contract, to support such cultural shifts, employers need to regularly discuss the availability and benefits of flexible working arrangements with staff. Trade unions help facilitate these discussions.
- 2.7 The CSP endorses the TUC's position on equality reps' particular role in mainstreaming flexible working within the workplace, and supports the TUC's recommendation that equality reps be given statutory recognition and paid time off for union duties.

### Equality Impact Assessments

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<sup>4</sup> [Guidance for joint union-employer partnerships on reviewing flexible working policies](#), appendix 1

<sup>5</sup> [Guidance for joint union-employer partnerships on reviewing flexible working policies](#)

- 2.8 In responding to this consultation, government should acknowledge and remind public sector employers of their Public Sector Equality Duty (PSED).
- 2.9 To demonstrate their PSED compliance, public sector workplaces should conduct and publish an Equality Impact Assessment (EIA) when developing flexible working policies in line with any new legislation.

### **3. Responses to consultation questions**

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

- 3.1 Strongly Agree, with below caveats.

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

- 3.2 Best-practice employers already consider flexible working during the recruitment process, and from day one of employment. In 2021, healthcare trade unions and NHS employers agreed new provisions in the NHS contract which give NHS staff the right to make 'day one' requests for flexible working when starting with a new employer.
- 3.3 Extending the right through legislation would expand flexible working opportunities across the economy, to the benefit of staff, employers and service users.
- 3.4 However, a 'day one' right does not go far enough, as it still requires job applicants to proactively ask about flexible working opportunities during or immediately following recruitment interviews. Many job applicants do not feel comfortable initiating such discussions, out of fear of recruitment bias.
- 3.5 Employers should therefore be required to consider - and promote - the availability of specified flexible working arrangements at the point of recruitment. Such measures have been initiated within the NHS, following joint agreement between trade unions and NHS employers.

#### **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?**

- 3.6 Strongly Agree, with below caveats.

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

- 3.7 A statutory requirement would be consistent with the approach already taken by best-practice employers. The Advisory, Conciliation and Arbitration Service (ACAS) already recommends that employers should try to find compromise arrangements where requests have not been agreed.
- 3.8 Furthermore, employers should be required to provide an escalation & appeal process for when line managers feel they are unable to accommodate flexible working requests.

- 3.9 The NHS contract now requires NHS employers to agree a centralised escalation and appeal process with their staffside representatives. These processes provide an opportunity for further dialogue with those whose requests have been turned down. They are used to explore where all appropriate options have been explored.

**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?**

- 3.10 No. Employers should already be automatically considering the business reasons for if and when refusing a request. There should therefore be no burden to detailing these business cases.

**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?**

- 3.11 Yes, there should not be a limit on the number of requests an individual can make in any given 12-month period.

**Please give reasons for your answer**

- 3.12 Best practice employers already allow employees to make an uncapped number of flexible working requests within the year. For instance, this has been a contractual requirement for NHS employers in England and Wales since 2021.
- 3.13 Flexible working is available and beneficial to all. Those making flexible working requests should not be required to document their rationale for doing so. However, Labour Force Statistics and other National Statistics indicate that flexible working arrangements are disproportionately arranged for those with caring responsibilities. Such caring responsibilities often emerge without notice.
- 3.14 Therefore, both the current cap on statutory requests to one per year - and the legal three-month response window - can impact on individuals' ability to remain with their current employer, and within the labour market.

**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?**

- 3.15 Yes. Employers should be required to respond in a shorter time period than the current three-month statutory window.

**Please give reasons for your answer**

- 3.16 See paras 3.13 – 3.14

**Are you aware that it is possible under the legislation to make a time-limited request to work flexibly? What would encourage employees to make time-limited requests to work flexibly? Please provide examples.**

- 3.17 The statutory 3-month response window for employers is a current barrier to individuals making time-limited requests. It should be shortened to support greater uptake of time-limited requests.

**The CSP is happy for this response to be published. We request further contact when the government's consultation response is published.**



Elaine Sparkes  
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For further information on anything contained in this response or any aspect of the Chartered Society of Physiotherapy's work, please contact:

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