

The future of flexible work

A TUC report

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Summary

Genuine flexible working can be a win-win arrangement for both workers and employers. It can allow people to balance their work and home lives, is important in promoting equality at work and can lead to improved recruitment and retention of workers for employers.

There is a real appetite among workers for a range of flexible working options. Our research shows more than four out of five (82 per cent) workers in Britain want to work flexibly in the future, rising to 87 per cent amongst women workers. The most popular forms of flexible working desired in the future are remote working, flexi-time, and part-time work but workers would also like job sharing, annualised hours, term time only working, compressed hours and mutually-agreed predictable hours to be made available to them.

To meet this demand from workers, we need to negotiate new rules that provide fair flexibility for everyone.

Before the pandemic, there was deep inequality in access to genuine flexible working. Too many people in working-class occupations were closed out of genuine flexibility and instead had worse terms and conditions masquerading as 'flexibility' forced onto them in the form of zero-hours contracts and other forms of insecurity. This so-called 'flexibility' strips workers of rights and makes them face irregular hours and therefore irregular income. Work is offered at the whim of their employer and last-minute shift changes are the norm. Future flexibility must provide predictability, including regular shift patterns and notice of hours to address the damaging impacts of insecure work.

When workers try and access genuine, two-way flexibility, for example flexi-time, remote working and part-time work, three in ten of their requests for flexible working are turned down, with employers having an almost unfettered ability to do so, given the breadth of the statutory "business reasons" that can currently be used to justify a refusal¹. The most popular form of flexibility, flexi-time is unavailable to over half (58 per cent) of the UK workforce. This number rises to nearly two-thirds (64 per cent) for people in working-class occupations².

The experience of the pandemic has significantly changed the landscape of flexible working. Since March 2020 all those who could work from home were expected to do so. This has brought about a popular narrative of home working being the common experience of the pandemic. All attention around flexible working is focused on the needs and experience of the third of the workforce who worked from home during the pandemic. Those who have worked from home are more likely to be in higher paid occupations and from London and the Southeast³. However, over half of the workforce

¹ <https://www.tuc.org.uk/sites/default/files/2019-10/BEISFlexibleworking.pdf>

² <https://www.tuc.org.uk/sites/default/files/2019-10/BEISFlexibleworking.pdf>

³ <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/labourproductivity/articles/homeworkinghoursrewardsandopportunitiesintheuk2011to2020/2021-04-19#characteristics-and-location-of-homeworkers>

continued to work outside the home. These workers have not been able to access the flexibility available to home workers. With the exception of home working, all forms of flexible working have fallen over the past year, meaning that has been even harder than before for these workers to access flexible working arrangements⁴.

As we exit the pandemic there is a real risk of a class and geographical divide being created between the flexible working haves and have nots. A recent survey of employers suggests that employers are more likely to not offer flexible work to staff who could not work from home during the pandemic. One in six (16 per cent) of employers surveyed said that after the pandemic, they will not offer flexible working opportunities to staff who could not work from home during the pandemic. This compares to one in sixteen (6 per cent) saying they will not offer flexible working opportunities to those who did work from home in the pandemic.

We cannot allow flexible working to become a perk for the favoured few - offered to a minority of the workforce who are able to work from home – and serving to reinforce existing inequalities.

As well as ensuring that there is fair access to flexible working, we need to make sure that flexible working benefits workers, helping them balance their work and home lives.

Demand for remote working has been transformed by the experiences of enforced home working during the pandemic. More than nine out of ten (91 per cent) of those who worked from home during the pandemic want to spend at least some of the time working remotely, with only one in 25 (4 per cent) preferring to work from an external workplace full time.

We need to ensure that as businesses respond to this demand, new flexibilities are implemented fairly, and address the challenges as well as opportunities of this form of work. Steps need to be taken to ensure that, after the pandemic, the experience of those working from home does not mirror the damaging one sided 'flexibility' experienced by so many on zero-hours contracts, with arrangements imposed that only benefit employers. Increased access to remote working must not come at the price of reductions to workers pay, increased intrusive remote surveillance, unsafe working environments, lack of access to union representatives, an increase in unpaid hours worked and draining, always-on cultures. No worker should be denied the ability to return to working from an external workplace and be forced to work from home as the result of money saving office closures.

We believe trade unions are best placed to work with employers to ensure competing demands are reconciled and workers needs met. These include responding to the organisational challenges that new forms of flexibility can impose, including responding to production cycles and public demand for services. Trade unions have long experience of negotiating collective solutions to these problems that balance workers' and business needs.

⁴ <https://www.cipd.co.uk/knowledge/fundamentals/relations/flexible-working/flexible-working-impact-covid>

The government must set out a strategy on the future of flexible work and its integral role in shaping a better and more equal recovery for workers following the pandemic. This should include how they aim to respond to the impacts that increased remote working may have on transport, retail, hospitality and other sectors potentially affected by decreased office working in city centres. Increased levels of remote working could have substantial adverse effects for other workers in these sectors. The government's strategy must include steps to ensure that the jobs of those who may be impacted by lower levels of office-based working are not threatened.

There is widespread recognition of the fact that the current legislative framework in relation to flexible working wasn't working effectively before the pandemic. The government itself has highlighted the need for change in its 2019 manifesto commitment to make flexible working the default. We need the government to act without delay to introduce their long-promised Employment Bill and strengthen workers' rights in a range of areas to make sure we have a system of genuine flexible working that works for all workers.

Recommendations

Government

The government should:

avoid a class divide and strengthen all workers' rights to access genuine flexible working including predictable hours by introducing:

1. a legal duty on employers to consider which flexible working arrangements are available in a role and publish these in job advertisements, with the new postholder having a day one right to take up the flexible working arrangements that have been advertised. If an employer does not think that any flexible working arrangements are possible, they should be required to set out the exceptional circumstances that justify this decision.
2. a day one right to request flexible working for all workers, with the criteria for rejection mirroring the exceptional circumstances set out above. Workers should have a right to appeal and no restrictions on the number of flexible working requests made.

act to eliminate one-sided, false 'flexibility' that is driven by employers through:

3. abolishing zero-hours contracts by giving workers the right to a contract that reflects their regular hours, at least four weeks' notice of shifts and compensation for cancelled shifts.

take steps to ensure that flexible workers do not experience worse terms and conditions or negative impacts on their health and wellbeing through:

4. introducing greater access to workplaces, including to home workers, for trade unions and strengthening collective bargaining rights. The best way to ensure fair flexibility for workers is through collective action.
5. ratifying the International Labour Organisation's Home Work Convention⁵.
6. introducing a statutory right for employees and workers to disconnect from their work so as to create "communication free" time in their lives.

introduce new legislative protection and statutory guidance relating to the use of artificial intelligence (AI) to recruit and manage people by:

⁵ ILO Home Work Convention, 1996 (No. 177) available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312322

7. amending employment and data protection legislation and provide for statutory guidance to ensure that no unlawful discriminatory decisions can be made using artificial intelligence (AI), secure appropriate work/home boundaries and privacy rights, and guarantee transparency and explainability in relation to technology at work (see the [TUC's AI manifesto](#) for proposals in full).
8. introducing a statutory duty to consult trade unions in relation to the deployment of high-risk AI and automated decision making (ADM) systems in the workplace.
9. introducing a comprehensive and universal right to human review of decisions made by AI in the workplace which are high-risk⁶, as well as an express statutory right to in person engagement in relation to decisions made in the workplace which are high-risk. Employees and workers should have a right to insist that they can interact with a human being rather than a machine or algorithm when high-risk decisions are being made about them.

Government should also set out a strategy for the future of flexible work that clarifies the role that flexible working can play in building a fairer recovery from the pandemic, promoting equality for workers, benefiting local communities and the environment. Any flexible work strategy must also include managing the impact of increased remote working on sectors impacted by lower levels of office-based staff such as transport and retail and the workers whose jobs rely on this.

Employers

Employers do not need to wait for legislative change in making genuine flexible work the default in their workplaces and ensuring that all workers have the opportunity to benefit from positive flexibility that helps them to balance work and home life. In order to achieve this employers should:

1. *Adopt flexibility by default.* Employers should consider what flexibility is available in different roles and ensure this is included in all job adverts going forward. The advert should set out the types of flexibility available rather than include a generalised statement. Current employees should have the opportunity to access the same flexibility as well. Flexibility could also include predictable hours and greater notice of hours.
2. *Consult with staff and their trade unions.* Employers may face challenges in balancing increased flexibility with organisational needs. The best way to manage this is to consult with trade unions on any changes to and monitoring of flexible work. Employers should consult on what workers experiences have been like during the pandemic and what flexibility they would like as we come out of the pandemic. Steps must be taken to ensure the benefits of flexibility during the pandemic are not lost but that negative experiences are addressed. Employers should continue to consult with staff in the

⁶ Any decision making by AI in the context of the employment relationship, particularly with the potential for legal effects, is likely to be high risk. The TUC is calling for sector specific guidance on the meaning of "high-risk". Examples of potential AI decision making include decisions as varied as those relating to recruitment, ratings, disciplinary and capability decisions and even termination of employment.

future as views expressed now, at a unique time in the pandemic, may change. Therefore, workers should have the opportunity to change their flexible working arrangements.

3. *Review existing flexible work policies.* Following consultation, employers should review existing provision for flexible working and publish new or amend flexible work policies. This should be done with recognised trade unions.
4. *Provide training in managing flexible working.* Employers should provide training to line managers to support effective and equitable management of staff who work flexibly including remote workers.
5. *Ensure the health, safety and wellbeing of all those working remotely.* Employers should not only meet regulatory health and safety obligations, but also promote decent work practices and standards agreed with the workforce. Employers should conduct risk assessments for those working from home. These should include both physical and mental health, including the impact of isolation on the mental health and wellbeing of homeworkers.
6. *Provide necessary equipment for home working.* Employers should provide and maintain the equipment necessary for home workers to work safely and effectively and provide the training needed for a person to do their job remotely. Employers must ensure reasonable adjustments are provided to disabled workers regardless of their work location or pattern.
7. *Ensure fairness.* Training should be offered to line managers to support effective and equitable management of staff who work flexibly including remote workers and progression, participation in training and retention rates should be monitored.
8. *Ensure technology works for the benefit of all.* There should be genuine and active consultation with unions and workers before new technologies are introduced. We encourage all employers to adopt the values we set out in our [AI manifesto \(Dignity at Work and the AI Revolution\)](#) when considering the use of AI to manage people. No new technology should be introduced that infringes workers' right to privacy, breaches data protection legislation, or has a negative impact on their physical or mental health, or their safety and technology must not be used to make discriminatory and unlawful decisions about people at work. All workers should have a right to human review of decisions made by AI in the workplace which are high-risk and the right to insist that they can interact with a human being rather than a machine or algorithm when high-risk decisions are being made about them.
9. *Promote clear work-life boundaries.* Employers should respect the importance of clear work-home life boundaries and flexible working should not result in worker intensification, for example working excessive hours or not taking sick leave. Workers must have the right to disconnect from work and have "communication free" time in their lives to establish a decent work-life balance and appropriate boundaries between work and personal life, including when working from home and in relation to use of digital devices. Employers should negotiate right to disconnect policies with trade unions.

10. *Ensure access to trade unions.* Unions must have access to all workers, regardless of where, when and how they work, and all workers must be able to access the support of a union at work. Union reps who work from home should not be prejudiced against in their ability to carry out union duties and activities and access necessary facilities.
11. *Monitor implementation.* Employers should ensure their approach to flexible working is effectively promoting equality through carrying out workforce monitoring to highlight any differences of experience or outcome between flexible workers and other staff. In particular, employers should monitor:
 - pay
 - progression
 - access to training and development opportunities
 - recruitment
 - retention
 - discipline and grievance

Employers should disaggregate this data for different equality groups and consider it when looking at what steps need to be taken to close gender, ethnicity and disability pay gaps.

Trade unions

Trade unions should:

12. work with employers to review flexible working policies and practices and should negotiate for increased access to flexible working and for the protections outlined above, for example equipment for home working. Trade unions are best placed to ensure the needs of employers and preferences of staff are reconciled through constructive dialogue and negotiation.
13. train reps in negotiating for flexible work policies and supporting members with flexible working requests. Unions should train reps in organising hybrid workforces, where members may be spread across different locations and working different hours.
14. monitor the impact of flexible working and negotiate for any necessary changes in the future.

Benefits of flexible working

Genuine flexible work has significant benefits for working people. It is invaluable in helping people achieve a balance between work and home life and is also associated with improved wellbeing⁷. Recent ONS analysis⁸, showed that workers feel the main advantages of homeworking are an improved work-life balance and a reduction in time taken to complete work.

As well as offering benefits to people across the workforce, making flexible working available in all but the most exceptional of circumstances would be an important catalyst for promoting greater gender equality. Research⁹ has shown that many of the underlying causes of the gender pay gap are connected to a lack of quality jobs offering flexible work. Due to the unequal division of unpaid care, women often end up having to apply for part-time work, with 75 per cent of part-time workers being women¹⁰.

Often falsely positioned as a 'choice' women make to care for their children, a lack of good flexible working opportunities forces women into accepting often poorly paid, part-time jobs, exacerbating the gender pay gap. Part-time workers are paid less than full-time workers with equivalent qualifications and have fewer career, pay and progression opportunities compared to full-time workers¹¹.

Making flexible work the default would also help to address some of the barriers disabled workers¹², those experiencing domestic abuse¹³, carers¹⁴ and women experiencing the menopause face in the workplace¹⁵. Flexible work¹⁶, for example, phased retirement, would also allow older workers to stay in the workforce for longer and remote working has the potential to help address geographic inequality by opening up higher paid office-based jobs, disproportionately located in London and the South East, to workers across the country.

Benefits for employers include boosting productivity, increased staff retention and improved recruitment. A study by the Government Equalities Office found that jobs advertised flexibly attracted 30 per cent more applicants than those that did not¹⁷. RCM

⁷ https://www.cipd.co.uk/Images/megatrends-report-flexible-working-1_tcm18-52769.pdf

⁸ <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/articles/businessandindividualattitudestowardsthefutureofhomeworkinguk/apriltomay2021#perceptions-of-homeworking>

⁹ <https://timewise.co.uk/article/article-real-reasons-behind-gender-pay-gap/>

¹⁰ <https://www.tuc.org.uk/sites/default/files/2019-10/BEISFlexibleworking.pdf>

¹¹ <https://www.tuc.org.uk/sites/default/files/2019-10/BEISFlexibleworking.pdf>

¹² Disabled workers have additional rights in accessing flexibility as a reasonable adjustment

¹³ <https://www.tuc.org.uk/sites/default/files/2019-10/BEISFlexibleworking.pdf>

¹⁴ https://www.carersuk.org/images/News_and_campaigns/Caring_Behind_Closed_Doors_Oct20.pdf

¹⁵ <https://www.tuc.org.uk/sites/default/files/Menopauseper cent20toolkitper cent20Engper cent20FINAL.pdf>

¹⁶ https://www.tuc.org.uk/sites/default/files/2020-08/olderworkers11_3.pdf

¹⁷ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/966407/Encouraging_employers_to_advertise_jobs_as_flexible.pdf

research also shows that 76 per cent of midwives who have left the job might return if there were opportunities to work flexibly¹⁸. NAHT also reported to us that a lack of work-home life balance is a significant reason that teachers are reluctant to apply for senior leadership roles, so providing flexible work could be a successful factor in increasing retention and promotion of teachers.

However, despite these clear advantages there is a clear mismatch between the proportion of workers wanting flexible work and those who are able to access it.

¹⁸ <https://www.rcm.org.uk/news-views/rcm-opinion/guidance-on-flexible-working/#:~:text=Flexible%20working%20is%20an%20issue,turn%20benefits%20health%20and%20wellbeing.&text=An%20RCM%20survey%20showed%20that,were%20opportunities%20to%20work%20flexibly.>

Flexible work before the pandemic

Mismatch between workers wanting and getting flexible working

Prior to the Covid-19 pandemic, the proportion of the workforce with flexible work arrangements was significantly less than the number of working people wanting to access flexible working. CIPD Working Lives research in 2019 showed UK workers tend to have a poor work–life balance¹⁹. Based on a measure of how often job demands interfere with family life, the UK ranked 24th out of 25 countries. The survey found that, excluding the self-employed, one in five employees (21 per cent) had no flexible working arrangements available to them. Yet the unmet demand extended far wider than this. Overall, two thirds of UK employees (68 per cent) wanted to work flexibly in at least one form that was not currently available to them, with the most popular arrangements being flexi-time (70 per cent of those who cannot use this arrangement would like to do so), compressed hours (58 per cent) and working from home (49 per cent).

TUC research in 2019 showed that flexi-time was unavailable to over half (58 per cent) of the UK workforce, rising to nearly two-thirds (64 per cent) for people in working-class occupations²⁰. This lack of access to flexible work was mirrored in the proportion of job adverts which offered flexible work, rising from 9.5 per cent in 2015 to just 15.3 per cent in 2019²¹.

Weakness of current rights

Workers in the UK do not currently have a right to work flexibly, they merely have a right to request it. This right to request flexible working has existed in some form or other for almost two decades. It was originally introduced in April 2003 for parents of children aged under six (or under 18 if disabled) following a report by the Work and Parents Taskforce which found that if there was no intervention parents might drop out of the labour market. The right to request was characterised at the time as a “gentle push towards policies that would otherwise take 20 years to achieve”²². Since that point, the legislation has been incrementally widened until 2014, when all employees with at least 26 weeks' continuous employment, regardless of parental or caring responsibilities, were able to request flexible working arrangements. Only those legally classed as employees are able to make requests and only one request every 12 months is permitted²³.

¹⁹ https://www.cipd.co.uk/Images/uk-working-lives-2019-v1_tcm18-58585.pdf

²⁰ <https://www.tuc.org.uk/sites/default/files/2019-10/BEISFlexibleworking.pdf>

²¹ https://timewise.co.uk/wp-content/uploads/2019/09/TW_Flexible_Jobs_Index_2019.pdf

²² Guardian, November 2001, DTI backs flexitime for 3.8m parents, available at <https://www.theguardian.com/money/2001/nov/21/workandcareers.politics>

²³ <https://www.acas.org.uk/making-a-flexible-working-request>

Whilst one sided flexibility enforced by employers has been growing, working people experience significant barriers to accessing the types of flexible work they actually want. TUC research²⁴ conducted shortly before the pandemic, showed that one in three requests for flexible working were being turned down. Employers currently have an almost unfettered ability to turn down a flexible working request, given the breadth of the eight statutory “business reasons”²⁵ that can currently be used to justify a refusal.

The rate at which flexible work requests are being rejected means for many the right to request is merely a right to be rejected. Restrictions to one request every 12 months effectively locks employees out from further requests if they are rejected. This is in stark contrast to the flexibility demanded by employers, with sometimes weekly variations in working hours needing to be accommodated by workers²⁶.

Another significant barrier to accessing flexible working arrangements is the lack of legal right to appeal an employer’s decision once it has been made. The ACAS code of practice on the Right to Request Flexible work is clear that “the law does not require an employer to allow an appeal”²⁷. A lack of a right to an appeal process undermines employees’ confidence in attempting to challenge decisions.

There is a current possibility of taking an employment tribunal claim if the employer has not complied with the Flexible Working Regulations or has committed an act of sex discrimination in turning down the request. But the process places considerable demands on potential claimants in terms of time, cost and stress which often puts employees off undergoing the process.

The fact that employers can also take up to 3 months to respond to a flexible work request means employees often wait weeks or months before receiving a response. If flexibility is essential in order for a worker to be able to do a job, this wait can put them off applying for a role, pushing them towards part-time or insecure roles, where flexibility comes at the price of pay or employment rights.

Impact of the right to request

In order to better understand the impact of the right to request flexible working we analysed flexible working data from the year before the significant broadening of the right in 2014 and from 2020²⁸. The broadening allowed all employees with 26 weeks service to request flexible working, regardless of parental or caring responsibilities.

This shows that despite the length of time that the legislation has been in force and the broadening of its scope, it has not brought about the changes intended. The percentage of

²⁴ <https://www.tuc.org.uk/news/one-three-flexible-working-requests-turned-down-tuc-poll-reveals>

²⁵ <https://www.acas.org.uk/acas-code-of-practice-on-flexible-working-requests/html>

²⁶ <https://www.livingwage.org.uk/news/almost-two-fifths-working-given-less-weeks-notice-working-hours>

²⁷ <https://www.acas.org.uk/responding-to-a-flexible-working-request/if-your-employee-appeals-your-decision>

²⁸ Based on analysis of Labour Force Survey Q4 2013 and 2020

employees doing no form of flexible working (under the Labour Force Survey definition) has only changed by 4 per centage points, from 74 to 70 per cent between 2013 and 2020.

Looking at a breakdown of the types of flexible work, it is interesting to note that zero-hours contracts (ZHCs), a negative form of one sided 'flexibility' have the second highest rise in usage. Forms of flexible working such as job sharing and compressed hours remain fairly rare and job sharing has actually become less common (see Figure 1).

	% of employees (Q4 2013)	% of employees (Q4 2020)	% change
Flexi-time	11.3	12.8	13
Annualised hours	4.5	7.1	58
Term-time	5.4	4.7	-13
Job share	0.7	0.4	-43
Nine-day fortnight	0.4	0.4	0
4.5 day week	0.7	0.7	0
ZHCs	2.1	3.1	48
None of these	73.7	69.5	-6
Don't know	0.6	0.4	-33
On-call	2.1	2.2	5

Figure 1 Percentage of employees taking up flexible work options.

The current right to request is available to workers after 26 weeks in a job. However, there is limited evidence that after 26 weeks the number of working people accessing flexible working significantly increases. TUC analysis of the Labour Force Survey²⁹ shows that the percentage of employees on flexi-time (the most popular form of flexible work) with less than three months service is 9.3 per cent and only increases to 11 per cent for employees with between six months and less than 12 months service.

The table below (Figure 2) suggests that the current right to request does not drive a significant increase in access to flexible working, but there is more of a gradual rise, perhaps associated with seniority or trust built over time.

²⁹ Based on TUC analysis of Labour Force Survey Q4 2020

Length of time with current employer	% of employees on flexi-time
Less than 3 months	9.3
3 months, less than 6	9.5
6 months, less than 12	11
1 year, less than 2	11.7
2 years, less than 5	11.8
5 years, less than 10	12.3
10 years, less than 20	14.6
20 years or more	17.5
Total	12.8

Figure 2 Percentage of employees accessing flexi-time after length of time with employer.

This suggests that the solutions forwarded by some to make flexible working the default simply by bringing forward the current right to request to the first day in a job would have little impact in opening up flexible working.

The current legislative framework, despite the length of time it has been in place, is not leading to a significant increase in the number of workers accessing flexible work, let alone making flexible working the default and it has coincided with a sharp rise in the use of zero-hours contracts – an extreme form of one-sided flexibility.

Impact of one sided, enforced flexibility

Most definitions of flexible work, including that of the Labour Force Survey, include arrangements such as flexitime, job-shares, and compressed hours but also zero-hours contracts and on-call working³⁰.

The TUC's support for flexible working does not include one-sided flexibility, available only on the employer's terms. The flexible working arrangements that we are seeking to normalise are those which reflect genuine, two-way flexibility, helping workers balance work and their life outside the workplace. We have long been concerned about the prevalence of insecure work, including the practice of giving workers zero-hours or short-hours contract, and so are the public. TUC polling shows that over half (54 per cent) want zero-hours contracts banned and seven in ten (70 per cent) believe that workers should have the right to 28 days' notice of shifts³¹.

³⁰ https://www.cipd.co.uk/Images/flexible-working_tcm18-58746.pdf

³¹ <https://www.tuc.org.uk/news/huge-demand-government-take-action-workers-rights-tuc-poll-reveals>

Our analysis shows that ahead of the coronavirus pandemic, there were 3.6 million workers in insecure work³², with BME, women and disabled workers³³ disproportionately represented. Recent research by the TUC and Race on the agenda³⁴ shows that BME workers are far more likely than white workers to rely on zero-hours contracts. For instance, just 2.5 per cent of white men are on zero-hours contracts, compared to 4.1 per cent of BME men. The highest proportions are found among BME women at 4.5 per cent, compared to 3.2 per cent of white women.

Those with no or few guaranteed hours are often offered work at the whim of their employer, facing irregular hours and therefore irregular income, as well as last minute shift cancellations. Rather than pick and choose their hours, many workers feel compelled to work whenever asked. If shifts are turned down, there is an implicit threat that they could lose future work. So, flexibility exists for the employer, but not the worker.

This makes it nearly impossible for workers to plan their finances or time. This is a particular issue for parents who must arrange childcare or those with other caring responsibilities.

Many also miss out on rights and protections that many of us take for granted, for example the right to sick pay and protections from unfair dismissal or statutory redundancy pay. During the pandemic we have seen the damaging impacts of insecure work. TUC research³⁵ shows that 67 per cent of insecure workers say they receive nothing when off sick compared with 7 per cent of secure workers. Insecure workers who need to self-isolate or take time off sick have to continue going to work in order to pay the bills.

Stigma attached to flexible working

Although a wide range of organisations³⁶ are clear about the benefits of flexible working for both employers and workers, significant barriers remain in relation to accessing flexible working due to discriminatory attitudes and the impact of workplace systems and cultures which are still constructed around a lack of flexibility being the norm.

There is a stigma that has been attached to flexible working, largely because of its association with women seeking to balance work and caring commitments³⁷. Research conducted by BEIS and EHRC³⁸ found that nearly two in five (38 per cent) mothers did not request a type of flexible working they wanted, typically because they did not think it would be approved or because they were worried their employer would view their request negatively. The same study revealed that over half (51

³² TUC (2020). Insecure work, TUC <https://www.tuc.org.uk/research-analysis/reports/insecure-work-0>

³³ <https://www.tuc.org.uk/research-analysis/reports/covid-19-and-insecure-work>

³⁴ <https://www.tuc.org.uk/research-analysis/reports/bme-workers-zero-hours-contracts>

³⁵ <https://www.tuc.org.uk/research-analysis/reports/covid-19-and-insecure-work>

³⁶ <https://www.cipd.co.uk/about/media/press/flexible-working-taskforce>

³⁷ Chung, Heejung (2020) Gender, flexibility stigma, and the perceived negative consequences of flexible working in the UK. *Social Indicators Research*, 151 (2). pp. 521-545. ISSN 0303-8300. (doi:10.1007/s11205-018-2036-7) (KAR id:70102) <https://kar.kent.ac.uk/70102/>

³⁸ <https://www.equalityhumanrights.com/en/managing-pregnancy-and-maternity-workplace/pregnancy-and-maternity-discrimination-research-findings>

per cent) of women had experienced discrimination or disadvantage as a direct result of having a flexible working request approved.

These workplace cultures can put people off from requesting flexible working altogether. Equity, the entertainment union, has highlighted that the particular challenges faced by those in the entertainment industry where individual performers and creative workers on highly insecure contracts feel they are vulnerable to exclusion from employment opportunities if they make demands in favour of improving work life balance.

NASUWT research³⁹ has shown that that only 8 per cent of teachers said flexible working requests were encouraged in their workplace. Many teachers reported that they did not bother to request flexible working given the low success rates and those that did and were turned down frequently did not seek to appeal the decision as they felt they were unlikely to be successful.

Accessing flexible work is also worsened by the lack of transparency about potential flexible working arrangements in job adverts, meaning many people cannot find suitable jobs or have to ask about the possibility of flexible working during the interview process. As the government themselves recognised in their consultation on proposals to require publication of flexible working policies, many workers are reluctant to do so for fear of being discriminated against⁴⁰.

³⁹ <https://www.nasuwt.org.uk/uploads/assets/uploaded/6fd07ce3-6400-4cb2-a8a87b736dc95b3b.pdf>

⁴⁰ BEIS (2019) Good Work Plan: Proposals to support families, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/819041/good-work-family-support-consultation.pdf

Changes brought about by the pandemic

Unequal access to flexible work during the pandemic

In March 2020, the UK Government and devolved administrations introduced legislation and accompanying guidance to impose lockdowns in response to the Covid-19 pandemic. People were prohibited from going to work unless they were unable to work from home. These rules were relaxed over the summer, but strict national lockdowns were re-introduced in December 2020. In February the UK government published plans for relaxing lockdown rules with 21 June 2021 identified as the date when home working guidance would cease. Following an announcement on 14 June the home working guidance will be in place until 19 July 2021.

The overnight shift to enforced home working led to many people working from home for the first time. However, although home working has been one of the dominant narratives of the pandemic it is by no means the experience of all or even a majority of workers. Estimates of the percentage of workers who worked from home during the pandemic vary, but never go above half. ONS analysis based on the Annual Population Survey shows that 36 per cent of those in employment did some work at home in 2020⁴¹. Other analysis suggests this may have been higher, but never the majority. Experimental analysis from the ONS suggested that almost half (47 per cent) of people in employment worked from home in April 2020⁴².

Home working varies significantly by age, region and income level. The same ONS data⁴³ from April 2020 mentioned above showed that young workers (people aged 16 to 24 years) were the least likely to do any work from home (30 per cent) and the ability to work from home is spread unequally across the country. Workers in London (57 per cent) were more likely than those in other regions, for example the West Midlands (35 per cent), to have done some work from home. Further analysis from ONS shows the percentage of workers in some areas was considerably lower, for example only 19 per cent of workers in Wolverhampton did any work from home in 2020⁴⁴.

⁴¹ Homeworking hours, rewards and opportunities in the UK: 2011 to 2020, ONS (2021). The analysis is based on the Annual Population Survey, which did not change its questions on homeworking in response to the pandemic. Available

at: <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/labourproductivity/articles/home-workinghoursrewardsandopportunitiesintheuk2011to2020/2021-04-19>

⁴²<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/bulletins/coronavirusandhomeworkingintheuk/april2020>

⁴³<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/bulletins/coronavirusandhomeworkingintheuk/april2020>

⁴⁴<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/labourproductivity/adhocs/13196homeworkingintheukbrokenbyunitaryandlocalauthoritydistricts2020>

Ability to work from home also varies significantly by sector, with 62 per cent of workers in the information and communication industry working from home in 2020, compared to 19 per cent of transport and storage workers. Workers in the highest paid industries were the most likely to work from home⁴⁵. This is in contrast to key workers who mainly worked outside the home during the pandemic. Four out of ten of these workers earn less than £10 per hour⁴⁶.

The story of those working from home during the pandemic is therefore likely to reflect the experiences of older, high-income workers and those based in the South East.

What types of flexible working do workers want?

The number of people working from home in the future is expected to rise following the coronavirus pandemic and some employers are already indicating they intend to move to hybrid working, where workers split their time between working at home and in an external workplace. An ONS business insights dataset from May 2021⁴⁷ revealed that 23 per cent of business intend to use increased homeworking as a permanent business model going forward, rising to 49 per cent in the Information and Communication sector, 43 per cent in Professional, Scientific and Technical Activities and 38 per cent in Education.

To better understand workers' future preferences, the TUC commissioned a survey exploring what types of location and hours based flexible working people wanted in the future. This polling covers both those who worked from home during the pandemic and those who didn't⁴⁸. It is worth noting that our polling has been done at a unique point in time, as restrictions due to the pandemic are lifted. Views expressed now may not reflect how people have felt throughout the pandemic and as the external context changes in the future, people's preferences may change as well.

Our research shows there is a real appetite for flexible working after the pandemic comes to an end. More than four out of five (82 per cent) workers in Britain want to work flexibly in the future, rising to 87 per cent amongst women workers.

We asked respondents for their preference on both hours and location of work. More than nine out of ten of those who worked from home during the pandemic want to spend at least some of the time working remotely in the future. More than three in five want to

⁴⁵<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/labourproductivity/articles/homeworkinghoursrewardsandopportunitiesintheuk2011to2020/2021-04-19>

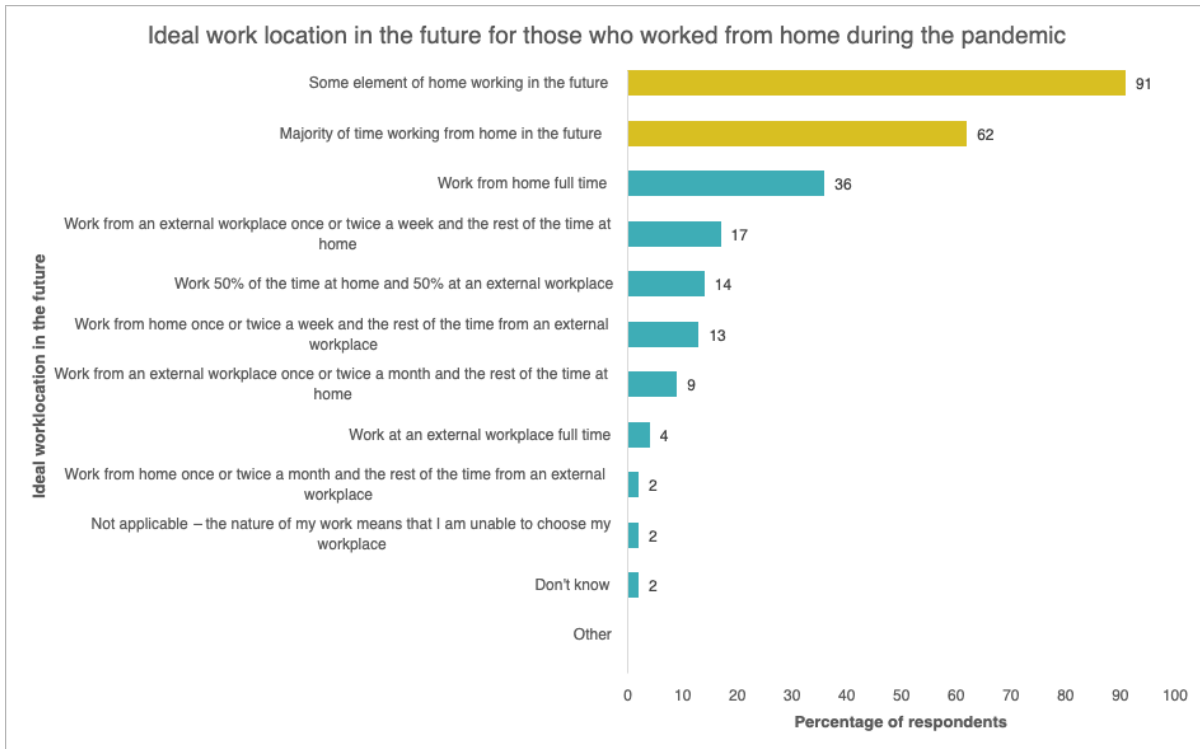
⁴⁶ <https://www.tuc.org.uk/blogs/new-class-divide-how-covid-19-exposed-and-exacerbated-workplace-inequality-uk>

⁴⁷ BICS Wave 29 6 May

2021 <https://www.ons.gov.uk/economy/economicoutputandproductivity/output/datasets/businessinsightsandimpactontheukeconomy>

⁴⁸ An online survey was sent to members of the YouGov Plc UK panel of 800,000+ individuals who have agreed to take part in surveys. Fieldwork was undertaken between 21 - 24 May 2021. The figures have been weighted and are representative of all GB adults (aged 18+). The profile is normally derived from census data or, if not available from the census, from industry accepted data. The total sample size was 2052 adults and questions aimed to find out people's preferences for how, when and where they would like to work in the future. Questions regarding where people worked during the pandemic, their ideal work location in the future and their ideal work pattern in the future based on a sample size of 1102.

spend the majority of their time working from home, with only one in 25 (4 per cent) of those who worked from home during the pandemic preferring to work from an external workplace full time (see graph 1).



Graph 1 Preference for future work location among those who worked from home during the pandemic.

The preferences of younger workers did not differ greatly from other age groups. Over half (58 per cent) of all 18 to 34 year olds who worked from during the pandemic would like to spend the majority of their time working home and almost nine in ten (88 per cent) would like to spend some of the time working remotely. ONS analysis published in June 2021 showed that young workers (16 to 29 year olds) were less likely to report an overall positive experience of homeworking than older workers. However, overall younger workers identified improved wellbeing and improved work-life balance as advantages of homeworking⁴⁹.

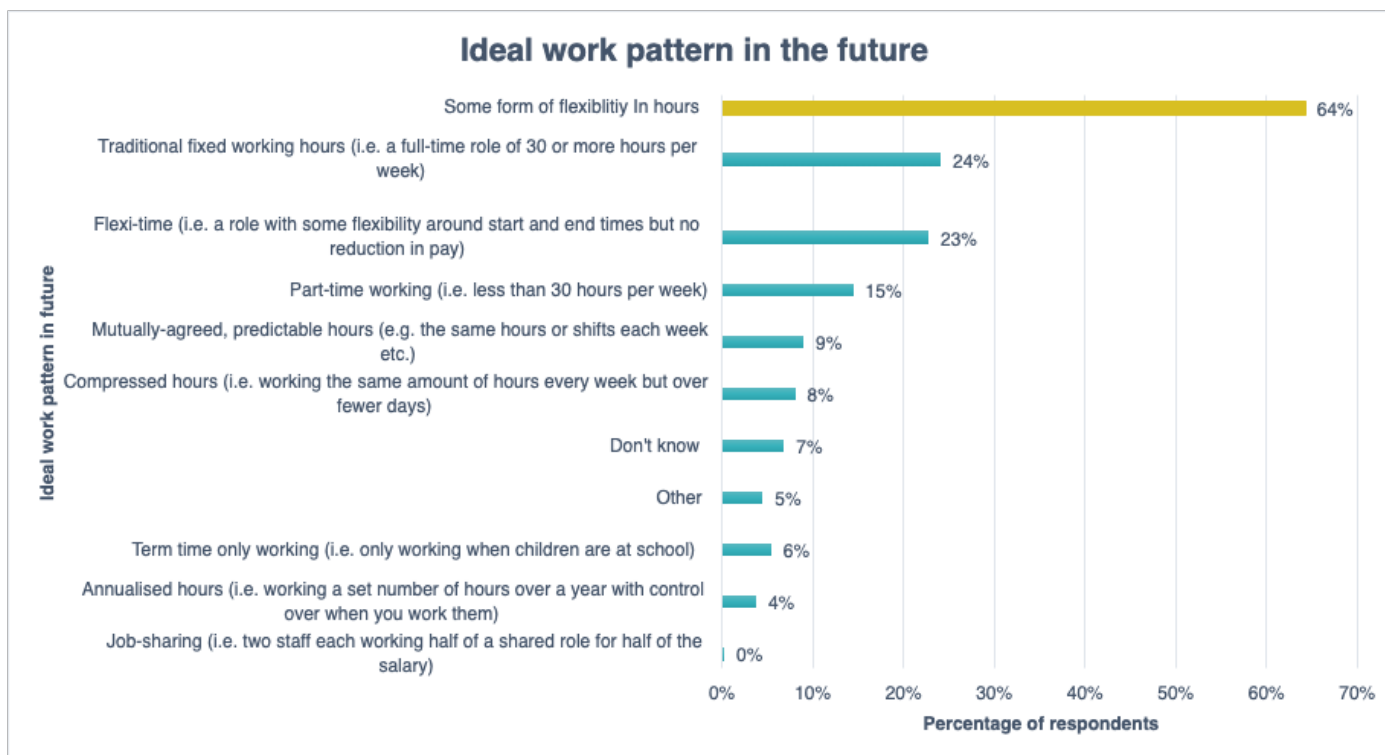
Although home working during the pandemic has been unequally distributed across the country, respondents in the North and Midlands who worked from home during the pandemic were slightly more likely (94 per cent) to want to spend some time working remotely in the future.

⁴⁹<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/articles/businessandindividualattitudestowardsthefutureofhomeworkinguk/apriltomay2021#data-sources-and-quality>

Our research shows differences between those from different class backgrounds, with respondents in higher-paid occupations⁵⁰ more likely to have worked from home during the pandemic (60 per cent compared to 23 per cent of respondents in working-class occupations). However, of respondents in working-class occupations who did work from home during the pandemic almost six in ten (59 per cent) want to spend the majority of their time from home in the future and eight in ten (83 per cent) want some time working remotely in the future.

We know many people in working-class occupations, young workers and key workers will not have the opportunity to work from home. Therefore, access to flexible working must include hours based flexibility, including predictable hours, as well as location.

Respondents were also asked to choose their ideal working hours after the Covid-19 pandemic with the options including part-time work, flexi-time, annualised hours, compressed hours, job shares and mutually agreed predictable hours. Almost two thirds (64 per cent) of all respondents want some form of flexibility in hours in the future. Around one quarter (24 per cent) said they would like to work full time fixed working hours.



Graph 2 Ideal work pattern in the future, by all

⁵⁰ Respondents in higher paid occupations is defined as those from ABC1 social group and respondents in working-class occupations are those from C2DE social group. Definitions of social groups can be found here: <https://www.mrs.org.uk/pdf/Definitions%20used%20in%20Social%20Grading%20based%20on%20G7.pdf>

respondents

Women were more likely to want hours-based flexibility, with seven out of ten women (72 per cent) wanting some form of flexibility in the hours they worked after the pandemic.

Both those who worked from home and from an external workplace during the pandemic want flexibility in hours. Of those who worked from an external workplace during the pandemic, six out of ten (60 per cent) want flexibility in their hours in the future, rising to 69 per cent amongst women workers. Of those who worked from home during the pandemic, around seven out of ten (71 per cent) want flexibility in hours, demonstrating a desire for both location and hours based flexibility.

The most popular form of flexibility in working hours for women and respondents in higher-paid occupations was flexi-time (23 per cent of women and 28 per cent of workers in higher-paid occupations selected this as their ideal working pattern). However, part-time working was the most popular option for older workers (55 years old and over, 24 per cent chose part-time), and the second most popular after traditional hours for both respondents in working-class occupations (18 per cent) and for those who did not work from home during the pandemic (16 per cent).

One in ten (9 per cent) of our respondents chose mutually agreed, predictable hours as their ideal working pattern after the pandemic, rising to one in eight (13 per cent) for respondents in working-class occupations.

Many women are faced with an impossible situation in looking to balance the need to earn a living and care for their children. All too often they are faced with a lose-lose situation. A choice between a job that lacks basic rights like sick pay, without guaranteed hours and a job with basic rights but no access to flexible working that is therefore impossible to take up because of your caring commitments, is no choice at all. We know women, particularly BME women are over represented in insecure work. Recent research by the TUC shows that almost half of BME workers polled (45 per cent) have had shifts cancelled with less than a day to go, making it impossible to plan for childcare⁵¹.

Flexible working must be the default for all jobs to avoid forcing people, all too often women, into insecure and low paid work.

Whilst experiences during the pandemic have shown that people can work effectively from home, enforced home working is not the same as genuine flexibility. During the pandemic many working people also had to juggle childcare and home schooling with paid work, had to shift to work from home without notice or the necessary equipment and have coped with the mental health impacts of isolation, confinement and bereavement. Despite these extremely challenging conditions, many of those who have experienced home working during the pandemic want to continue with it in the future.

⁵¹ <https://www.tuc.org.uk/research-analysis/reports/bme-workers-zero-hours-contracts>

Risk of a two-tier workforce

However, the rise in enforced home working has not been mirrored in access to other forms of flexibility with data showing a drop in all other forms of flexible working arrangements since the onset of the Covid-19 pandemic⁵².

In order to better understand whether this trend might continue after the pandemic the TUC commissioned a survey of HR decision makers at private sector companies⁵³. The survey found that around two thirds (67 per cent) of employers surveyed with staff currently able to work from home are expecting to offer those staff the opportunity to work from home when the pandemic ends.

While this is positive, working from home is not the only form of flexible working, and as seen above, not the only form of flexible working that people want or can access. Worryingly our survey revealed that those who are not currently able to work from home due to the nature of their job are less likely to be offered any form of flexible working when the pandemic ends.

Overall, one in six (16 per cent) of employers surveyed said that after the pandemic, they will not offer flexible working opportunities to staff who could not work from home during the pandemic. This compares to one in sixteen (6 per cent) saying they will not offer flexible working opportunities to those who did work from home in the pandemic.

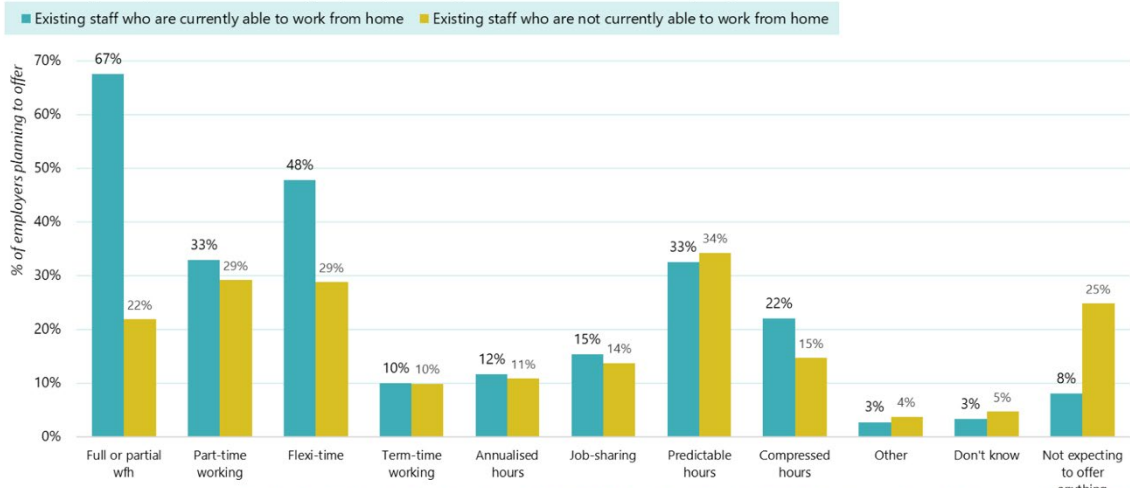
Not only are those who are currently able to work from home more likely to be offered home working after the pandemic, the survey also suggested they are also more likely to be offered other forms of flexibility such as flexitime, part-time working and compressed hours.

Those who can't work from home are three times more likely to not be offered any form of flexible working after the pandemic, with 25 per cent of employers surveyed with staff who can't work from home due to the nature of their work saying they're not expecting to offer any form of flexible working to such staff after the pandemic ends. In contrast, just 8 per cent of employers with staff that can work from home expect not to offer these staff any form of flexible working.

⁵² <https://www.cipd.co.uk/knowledge/fundamentals/relations/flexible-working/flexible-working-impact-covid>

⁵³ The TUC commissioned YouGov to carry out an online survey of HR decision maker between 4 and 15 May 2021. The total sample size was 1002 HR decision makers and questions aimed to find out their plans for offering flexible work options to employees in the future. Question regarding employers with staff currently able to work from home-based on a sample of 744 HR decision makers. Question regarding employers with staff currently unable to work from home-based on a sample of 649 HR decision makers.

Percentage of private sector employers planning to offer flexible working, by wfh status



YouGov polling of private sector HR decision makers on behalf of TUC. Base for existing staff currently wfh: HR Decision Makers who have staff who are currently able to wfh (744). Base for existing staff who are not currently wfh: HR Decision Makers who

Graph 3 Percentage of private sector employers planning to offer flexible working, by work from home status.

This risks creating a two-tier workforce with those who have worked from home during the pandemic receiving increasing access to flexible working, whereas those whose jobs do not offer the possibility of working from home being increasingly denied flexible working opportunities. The latter group is more likely to include key workers, those in lower paid occupations, younger workers and those outside of London and the South East.

Comparing our two sets of polling also demonstrates that employers' intentions on who they will offer flexible working hours to, goes against what workers actually want. Both those who have worked from home and those who haven't want access to flexible working.

Our recovery from the pandemic must include strengthening the rights to access all forms of flexible working. A sole focus on home working rights would create new inequalities for those who cannot easily work from home and deepen the inequalities caused by the pandemic.

Addressing the risks of increased homeworking

For those who can access home working there are also a range of risks that must be addressed.

An increase in working hours

Limiting working time or more importantly maximising time outside work, has always been a core element of ensuring a fair deal for workers and home working can be a threat to that. Research prior to the pandemic has shown that flexible working can often lead to higher workloads⁵⁴. FDA research⁵⁵ in the senior civil service has found that an increase in remote working was identified by members as having the potential to lead to a blurring of the boundaries between work and home, an expectation of constant availability and an encouragement of digital presenteeism. While flexible working has the potential to improve work-life balance, an 'always on' culture, and the rise of 'on-demand' services requiring 'on-demand' workers, is a significant risk to workers' rights.

Experiences of working from home during the pandemic has shown long hours to be a risk. ONS analysis⁵⁶ shows that people who completed any work from home did six hours of unpaid overtime on average per week in 2020, compared with 3.6 hours for those that never worked from home.

Polling by Prospect⁵⁷ in April 2021 after the third UK lockdown, showed that whilst the majority of respondents (58 per cent) said home-based working had a positive impact on work-life balance many were finding it difficult to switch off from work. Their research found 30 per cent of new remote workers reported working longer unpaid hours during the last year.

Surveillance of workers in their homes

The development of new technologies, including those powered by AI and machine learning, is transforming the world of work. AI-powered tools are now used at all stages of the employment relationship, from recruitment to line management to dismissal.

An increase in home working could result in an increase of surveillance of working people, for example through key logging, recording social media usage and software which photographs workers via webcam. A small but significant number (16 per cent) of union

⁵⁴ http://wafproject.org/wordpress/wp-content/uploads/BT_125709_WAF_report_v3.pdf

⁵⁵ <https://www.fda.org.uk/home/Getinvolved/flexible-working-civil-service-making-reality.aspx>

⁵⁶ <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/labourproductivity/articles/homeworkinghoursrewardsandopportunitiesintheuk2011to2020/2021-04-19#main-points>

⁵⁷ <https://library.prospect.org.uk/id/2021/00381?display=authoritypdf&revision=1>

reps told us in a recent survey that they had noticed workers being subjected to new monitoring technologies as a result of the increase in homeworking during the pandemic⁵⁸

A recent survey conducted by the LSE's Centre for Economic Performance found that more than 60 per cent of firms have adopted new technologies or management practices since the start of the pandemic and more than 90 per cent said they expected to keep the changes in place. Out of the firms who had not adopted new technologies, a third planned to do so in future⁵⁹.

Surveillance and monitoring of workers in their homes is likely to be unlawful and we oppose any introduction of surveillance that infringes a worker's (or their family's) right to privacy, breaches data protection legislation, has a negative impact on their physical or mental health, or their safety. Our recent survey and polling⁶⁰ on employers use of technology found that:

- 48 per cent of union reps said workers had not been asked for their consent before their employer introduces new technologies
- 60 per cent of workers agree that unless carefully regulated, workplace monitoring could increase unfair treatment in the workplace.
- technology providing constant real time evaluation of performance may have a detrimental impact on mental health and wellbeing.

Recent YouGov polling commissioned by Prospect⁶¹ also revealed the extent to which workers are uncomfortable with monitoring and surveillance while they are remote working, with 66 per cent being uncomfortable with keystroke monitoring and 80 per cent uncomfortable with camera monitoring.

A lack of trust by employers of home workers could be influencing this trend, driven by a view that those at home cannot be trusted to work productively. The increased use of surveillance is an example of poor employment practices often associated with the gig economy and employer side flexibility creeping into other areas of work.

Health and safety

Employers have the same health and safety responsibilities for home-based workers as any other worker, but we know from our unions that many employers were slow to react at the beginning of the pandemic. Our unions reported employers were failing to support workers to carry out risk assessments in their homes, provide the correct ergonomic equipment and address concerns related to isolation and stress. Many disabled workers also did not receive the reasonable adjustments they required when working from home.

⁵⁸ https://www.tuc.org.uk/sites/default/files/2020-11/Technology_Managing_People_Report_2020_AW_Optimised.pdf

⁵⁹ <https://cep.lse.ac.uk/pubs/download/cepcovid-19-009.pdf>

⁶⁰ https://www.tuc.org.uk/sites/default/files/2020-11/Technology_Managing_People_Report_2020_AW_Optimised.pdf

⁶¹ <https://prospect.org.uk/news/workers-are-not-prepared-for-the-future-of-working-from-home/>

Research⁶² looking into how working from home is affecting the UK workforce showed an increase in self reported musculoskeletal complaints and declining levels of exercise in the first 2 weeks of the lockdown in March 2020. In the survey by the IES, more than half of respondents reported new aches and pains, especially in the neck (58 per cent) and 60 per cent acknowledge they were exercising less. In the same survey 33 per cent reported feeling frequently isolated.

Access to promotion and development

Flexible work arrangements have often been stereotypically associated with a lack career ambition or have chosen to focus on other areas of their life over work, rather than a right that can help people balance their work and life commitments. In particular part-time work is often associated with poor progression routes. CIPD megatrends data on flexible working shows that part-time workers were less optimistic about promotion prospects. And only 19 per cent of part-time employees stated they had been promoted in the past five years compared to 38 per cent of full time⁶³. With women making up the majority of part-time workers, this is a significant impact on women's progression at work.

There is a danger that workers being out of sight at home will mean they are not considered when it comes to development and promotion opportunities. ONS analysis between 2012 and 2017, showed that employees who consistently worked from home were less than half as likely to be promoted than all other employees, when controlling for other factors⁶⁴.

Recent research by CMI and the Work Foundation⁶⁵ found that 26 per cent of managers expected remote working to decrease access to training and development. The same research also stated that managers expected greater take up of post-Covid-19 remote working to be by disabled workers and those with caring responsibilities, often women. This is consistent with patterns of who accessed home working before the pandemic. Any patterns that mean remote workers are less likely to access training, development and promotion opportunities could therefore be indirect discrimination.

Performance management

Increasing levels of home working will require managers to adapt management approaches, including as mentioned above ensuring that access to development is equal and managing through trust not surveillance. Yet research shows that two thirds of managers (65 per cent) report they have not received training on how to manage remote working staff in May 2021⁶⁶.

⁶² <https://www.employment-studies.co.uk/resource/ies-working-home-wellbeing-survey>

⁶³ https://www.cipd.co.uk/Images/flexible-working_tcm18-58746.pdf

⁶⁴ <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/labourproductivity/articles/homeworkinghoursrewardsandopportunitiesintheuk2011to2020/2021-04-19>

⁶⁵ <https://www.lancaster.ac.uk/work-foundation/news/blog/post-pandemic-hybrid-working-poses-new-challenges-to-diversity-and-inclusion>

⁶⁶ *ibid*

Increased working from home will also have implications for how employers communicate with and make decisions about workers. TUC research into technology managing people, found 22 per cent who responded said they had experience of use of technologies for absence management, 14 per cent for work allocation, and 14 per cent in the assessment of training needs and allocation⁶⁷. There is a risk that with increased remote working, decision making through technology without consultation or transparency with the worker could increase.

We also know from working mums experience in lockdown that clear communication from managers on expectation of workload was key to successful flexible working.

A TUC survey of working mums in January 2020 found that flexible work arrangements was the highest requested form of support (62 per cent) to cope with home schooling. Many participants reported that whilst their employer had granted flexible work, the expectation of workload had remained the same leaving women stressed and anxious.

Whilst future home workers will not have to cope with home schooling our survey demonstrated that flexible work arrangements need to be accompanied by adjustments in tasks and clear communication of expectation from employers.

Access to unions

Trade unions have been at the forefront of the response to the pandemic, fighting for workers safety and job security and to mitigate the impacts of the pandemic for millions of working people. We continued to organise and negotiate and used our collective strength and power to demand a seat at the table with both government and employers. As workers were confined to their homes, we often used digital methods to bring workers together and force change.

We were instrumental in the establishment of the Job Retention Scheme. Many workers in galleries and museums⁶⁸, manufacturing⁶⁹ and transport⁷⁰ were furloughed on 100 per cent wages due to agreements reached between unions and employers.

We know that workers are safer when they join a union, and up and down the country unions ensured employers were implementing health and safety measures such as PPE, ventilation and social distancing.

But we know that despite the opportunities that flexible working brings, increasing numbers of flexible workers has the potential to create an atomised and individualised workforce which is harder to bring together for collective power. We must also ensure that all workers, regardless of where or how they work, have access to a trade union and are able to

⁶⁷ https://www.tuc.org.uk/sites/default/files/2020-11/Technology_Managing_People_Report_2020_AW_Optimised.pdf

⁶⁸ <https://www.fda.org.uk/home/Newsandmedia/News/Museums-and-galleries-agree-to-pay-full-salary-to-furloughed-staff.aspx>

⁶⁹ <https://www.warringtonguardian.co.uk/news/18391957.jaguar-land-rover-supplier-omega-furloughs-workers-100-per-cent-pay/>

⁷⁰ <https://www.rmtlondoncalling.org.uk/content/tfl-and-london-underground-announce-plans-furlough-some-workers>

participate in trade union activities. Union reps who work from home must also be able to access the facilities and facility time they need to carry out their duties.

Action required

The current legislative framework supporting flexible working is ineffective. As we have highlighted the current approach has not led to any significant growth in the number of people accessing flexible work despite that fact that our polling shows eight in ten people want it. And for one third of workers, the right to request is merely a right to be rejected. For those who do access it flexible working is a struggle, coming at a cost in workplace cultures where full-time working is the favoured norm.

The pandemic has highlighted that access to home working is unequal and without reforms, we risk a two-tier workforce, with flexible working haves and have nots, split along income, age and regional lines. We must also address the risks of home working that have emerged during the pandemic. This means moving from the current individualised approach to one where flexible work is the default.

The first step is to expediate the Employment Bill. The Bill, which was promised in 2019 to improve people rights at work, was absent from the Queen's Speech in May 2021. The government has seemingly rowed back on its promise to boost workers' rights following the UK leaving the EU.

Flexible working duty

The TUC believes government should use the Employment Bill to introduce a duty on employers to publish flexible working options in job adverts and give workers the right to take up the advertised flexibility from day one. TUC polling shows popularity for this ask, almost two thirds of people (63 per cent) believe that working people should get flexible employment rights working from day one in a job. If employers feel that a role cannot accommodate any form of flexibility, they should be required to transparently set out the exceptional circumstances that justify this.

The practical steps to this policy should be as follows:

1. when employers recruit to a post they would have a legal duty to consider which flexible working arrangements are available in the role and publish these in the job advertisement.
2. if an employer considers that no flexible working arrangements are appropriate for the new role, then they would have to set out the exceptional circumstances which justify this decision.
3. the new postholder would have a day one right to take up the flexible working arrangements that have been advertised.

In addition to this all workers should have a right to request flexible working from day one, with the criteria for rejection mirroring the exceptional circumstances set out above. Workers should have no restrictions on the number of flexible working requests made.

When a worker transitions from a full-time working pattern, to a more flexible option, a proper evaluation of their role should be undertaken to ensure that their job is appropriately weighted. The TUC recognises that in some roles it is common for part-time workers to work the equivalent of a full-time post in fewer hours. This can result in less time for career development, an unsustainable pattern of working excess hours or elements of working life encroaching on their time outside of the work environment.

A right to appeal

The criteria which employers can use to justify refusing requests should also be more tightly drawn and there is also a need to strengthen the current legislation through allowing individuals to scrutinise and challenge an employers' reason for rejecting a request. The right of appeal should not be optional. Employers should be required to consider appeals relating to flexible working requests. These should be not be conducted by those involved in the initial rejection of the flexible working request.

Enforcement

We have set out what we consider to be the most effective approach to making flexible working the default in workplaces across the UK, however in order for any new rights to have any impact on workers' lived experience there needs to be a robust system for proactive enforcement. There should be a regulatory and individual route for enforcement.

In regard to a duty to publish flexible working options in a job advert, we feel that the Equality and Human Rights Commission (EHRC) is best placed to take enforcement action. They already have responsibility for taking action around discriminatory advertisements, including job advertisements, which breach the Equality Act 2010. The EHRC sets out a simple process for referring alleged breaches on their website⁷¹. A similar system of enforcement would be effective in the case of a new duty to publish flexible working options (or a justification of the exceptional circumstances which mean that flexible working is not possible) in a job advert. A well-publicised website should be created and administered by the EHRC to allow individuals and organisations, including trade unions, to report suspected breaches of the new duty.

In the case of a failure of an employer to offer advertised flexibility to a successful candidate, we feel that the most appropriate route to redress would be through an employment tribunal.

We recommend that the government undertake a detailed technical consultation to ascertain the specific detail of the enforcement regime.

⁷¹ <https://www.equalityhumanrights.com/en/advice-and-guidance/how-report-discriminatory-advert>

The EHRC must have its core funding increased to take enforcement action in this new area. In addition, we recommend that the EHRC is given extra programme funding to carry out an extensive monitoring exercise to assess compliance and effectiveness after new regulations come into force.

A flexible working strategy

If the shift to home-based working reflects the preferences of workers in our polling this has the potential to have a substantial knock-on impact on other workers. As the report of the Senedd's Economy, Infrastructure and Skills Committee highlights, "the shifting of office workers from city centres to local neighbourhoods has potentially huge implications for urban areas, service sectors and the public transport network"⁷². We cannot risk drifting aimlessly towards these impacts and leave the direction of travel to chance, down to the cumulative impact of multiple decisions by individual employers. We note that the Welsh Government has set out a remote working strategy which includes a target of 30% of the workforce working remotely. Given the importance of the role that flexible working can play as we exit the pandemic and the potential range of impacts on different workers, we call on the UK government to set out a strategy for the future of flexible work that clarifies the role that flexible working can play in building a fairer, greener, more equal recovery from the pandemic. This strategy must include steps to ensure that the jobs of those who may be impacted by lower levels of office-based working are not threatened.

A ban on zero-hours contracts

Reforms to flexible work must also eliminate one-side, false flexibility that is driven by employers and ban on zero-hours contracts. As a priority, we need to raise minimum standards and provide workers with much needed security. We are calling for:

- the abolition of zero-hours contracts by giving workers the right to a contract that reflects their regular hours
- at least four weeks' notice of shifts, and
- compensation for cancelled shifts.

These measures would ensure that predictability, as well as flexibility is guaranteed for workers. For further details on our policy recommendations for insecure workers please see the TUC report: "Insecure work, Why decent work needs to be at the heart of the UK's recovery from coronavirus".

Steps must also be taken to ensure that flexible workers do not experience worse terms and conditions or negative impacts on their health and wellbeing. We are therefore calling for the following.

⁷² Senedd Economy, Infrastructure and Skills Committee (2021) Remote Working: Implications for Wales <https://senedd.wales/media/nbbhxbn/cr-ld14202-e.pdf>

Greater access to workplaces for trade unions

Trade unions can help secure greater access to flexible working and will play a key role in ensuring that flexible workers do not experience worse terms and conditions or negative impacts on their health and wellbeing. Workers and unions need additional rights to make it easier for unions to raise employment standards. We are calling for:

- unions to have access to workplaces and workers, wherever they are working from, to tell workers about the benefits of union membership and collective bargaining.
- new rights to make it easier for working people to negotiate collectively with their employer.
- the establishment of new bodies for unions and employers to negotiate across sectors, starting with hospitality and social care.

To ensure that flexible workers do not lose out, we are also calling on the government to ratify the International Labour Organisation's Home Work Convention⁷³. The convention calls for the equitable treatment of homeworkers in health and safety, protection against discrimination, access to training and the right to join and participate in trade unions. As well as ensuring equitable treatment of home workers, ratification would also require the government to adopt, implement and review a national policy on home working in consultation with "the most representative organizations of workers".

Right to disconnect

As has been seen during the pandemic, flexible working can result in longer working hours. We therefore call on the government to introduce a statutory right for employees and workers to disconnect from work, to create 'communication-free' time in their lives. This should be included in the reinstated Employment Bill.

This right has been in force in France since 2016 and Ireland brought in a new code of practice on the right to disconnect this year. The Tanaiste are also reviewing plans to put the right to disconnect into law.

We are also calling for new legislative protections and statutory guidance relating to the use of AI to recruit and manage people, specifically the following.

Statutory duty to consult trade unions on artificial intelligence in the workplace

We have set out some of the challenges with increased use of technology. With the rise in remote working, the TUC believes this is a crucial moment to ensure AI is being used responsibly. We are calling for the amending of employment and data protection legislation and provide for statutory guidance to ensure that no unlawful discriminatory decisions can be made using AI, secure appropriate work/home boundaries and privacy

⁷³https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312322

rights, and guarantee transparency and explainability in relation to technology at work (see the TUC's AI manifesto for proposals in full).

We are also calling for a statutory duty to consult trade unions in relation to the deployment of high-risk AI and automated decision making (ADM) systems in the workplace.

A right to human review

The increased use of technology and AI in workplaces also brings risks of an atomised and isolated workforce where important decisions are made by technology and without human contact. The TUC is also calling for a comprehensive and universal right to human review of decisions made by AI in the workplace which are high-risk and an express statutory right to in person engagement in relation to decisions made in the workplace which are high-risk.

In practice, this means that employees and workers should have a right to insist that they can interact with a human being rather than a machine or algorithm in relation to high-risk decisions. For example, job applicants seeking a new role or existing employees facing redundancy decisions could insist that they are interviewed and marked by a human rather than simply talking into a screen.

Employers

Employers need not wait for government to pass legislation, they should work with trade unions to develop a collective approach to post pandemic flexible working that ensures the benefits of genuine flexible working are available to all and the risks associated with flexible work, in particular home working, are addressed.

We recognise there may be challenges for employers balancing the preferences of workers and organisational requirements such as production cycles, the need for a 24/7 service and business hours that need to be kept to. However, a range of employers have embraced the benefits of flexible working through work with trade unions.

NHS Employers have published guidance on the business case for flexible work⁷⁴, CWU and Santander have recently negotiated a new remote working agreement which protects jobs and the needs of those who need a workplace⁷⁵, employers such as Historic Scotland, UK Power Networks and Centrica are offering staff flexible working hours such as annualised hours⁷⁶ and some staff in the higher education sector have reported benefits of lower stress and higher satisfaction with work associated with the introduction of flexible working⁷⁷.

Employers should adopt flexibility by default and should consider what flexibility is available in different roles and ensure this is included in all job adverts going forward. The advert should set out the types of flexibility available rather than include a generalised

⁷⁴ <https://www.rcm.org.uk/news-views/rcm-opinion/guidance-on-flexible-working/>

⁷⁵ <https://www.cwu.org/news/major-change-at-santander-with-new-deal-on-post-covid-ways-of-working/>

⁷⁶ <https://members.prospect.org.uk/resources/archived-campaigns/worklife/takingcontrol/flexitime> and <https://members.prospect.org.uk/resources/archived-campaigns/worklife/biggerchanges/annualhours>

⁷⁷ <https://www.unison.org.uk/get-help/knowledge/working-patterns/flexible-working/>

statement. Current employees should have the opportunity to access the same flexibility. Flexibility could also include predictable hours and greater notice of hours.

Employers should ensure their approach to flexible working is effectively promoting equality through carrying out workforce monitoring to highlight any differences of experience or outcome between flexible workers and other staff. In particular, employers should monitor:

- pay
- progression
- access to training and development opportunities
- recruitment
- retention
- discipline and grievance

Employers should disaggregate this data for different equality groups and consider it when looking at what steps need to be taken to close gender, ethnicity and disability pay gaps.

As restrictions are lifted, employers should consult with staff and their trade unions on what their experiences have been like during the pandemic and what flexibility they would like as we come out of the pandemic. We believe trade unions are best place to work with employers to reach constructive solutions that meet the preferences of workers and organisational needs.

Following consultation, employers should review existing provision for flexible working and publish new or amend flexible work policies. This should be done with the relevant trade unions. Employers should continue to consult with trade unions in the future and workers should be given the opportunity change their flexible working arrangements if desired.

We recommend employers shape their approach to flexible working around the following set of principles.

Open to all

Flexible work needs to be open to all, with flexibility the normalised default position in a workplace, rather than a perk reserved for a favoured few. The full range of flexible working options, should be considered, advertised in job roles and made available to current employees. The needs of one group of flexible workers, for example, home workers, should not be prioritised above others, for example, those who require predictable shifts.

Voluntary and open to change

Flexible working must be voluntary not imposed and workers should have an opportunity to change their flexible working arrangements, for example remote workers having the opportunity to return to full or partial office-based working should they so wish. Any contractual change related to flexible working should be negotiated with the recognised trade union.

Genuine flexible working

Flexible working arrangements should reflect genuine, two-way flexibility, helping workers balance work and their life outside the workplace. We would strongly oppose the introduction of any steps which promote employers' ability to have an "on demand" workforce, while minimising their obligations to the people who work for them, through such means as zero-hours contracts.

Equality

Workers must not be subject to discrimination or disadvantage as a result of their flexible working arrangements. Workers' contractual terms, conditions and level of remuneration must not be diminished as a result of accessing flexible working including home working. The process for arranging flexible work should be transparent to ensure fair treatment for all workers.

Technology must not be used to make discriminatory and unlawful decisions about people at work and there must also be equal access to technology at work for all, regardless of characteristics such as age or disability.

Employers must ensure that they comply with their positive and proactive duty to make reasonable adjustments for disabled workers regardless of their work location or pattern. Flexible working, including home working, can be a reasonable adjustment itself.

Access to training and career development

Flexible workers, including home workers must have the same access to employer funded training and development opportunities as others. Training should be offered to line managers to support effective and equitable management of staff who work flexibly including remote workers and progression, participation in training and retention rates should be monitored.

Communication and collectivism

Flexible work must not result in an atomised, isolated workforce. Employers must ensure that communication methods they use enable flexible workers' full and equal participation and contribution in all areas of work life and allow workers to collaborate. This includes meetings between colleagues, supervision sessions and provision of information. Mechanisms must be set up to ensure that remote or part-time workers are not disadvantaged through being cut out of information exchanges between office-based workers.

Trust

Objections to flexible work, in particular home working, often come from a view that workers cannot be trusted to perform tasks when out of sight of their employer. People should be trusted to do their job and judged by their ability to carry out their role rather than by when and where they work.

Access to trade unions

Recognised unions must have access to all workers, regardless of where, when and how they work, and all workers must be able to access the support of a union at work. Time spent attending union meetings by workers should be treated as working time and therefore paid. Health and safety and union representatives should be able to visit and contact remote workers, with the agreement of the worker. Home workers must also have the same opportunity as others to stand for union positions, access facility time and facilities and to undertake any duties and training required as union representatives. Employers should ensure to follow the Acas code of practice for time off for trade union duties and activities⁷⁸ so that union members who work flexibly are not disadvantaged.

Clear work life boundaries

Employers should respect the importance of clear work-home life boundaries and flexible working should not result in work intensification, for example working excessive hours or not taking sick leave. Workers must have the right to disconnect from work and have “communication-free” time in their lives to establish a decent work-life balance and appropriate boundaries between work and personal life, including when working from home and in relation to use of digital devices. Employers should negotiate right to disconnect policies with trade unions. These boundaries are essential to the core trade union demand of a fair day’s pay for a fair day’s work.

Privacy and freedom from intrusive surveillance

We encourage all employers to adopt the values we set out in our AI manifesto: Dignity at Work and the AI Revolution when considering the use of AI to manage people. No new technology should be introduced that infringes workers' right to privacy, breaches data protection legislation, or has a negative impact on their physical or mental health, or their safety. Workers’ right to privacy is strengthened when they work from home. Surveillance and monitoring of workers in their homes is likely to be unlawful. Monitoring a worker in their own private home can cause psychological stress and potentially infringes the right to privacy of their family members who also use the office space and computer.

Transparency

Employer decisions should be transparent and negotiated through a trade union. This applies to any new technology used. It should be clear to people when technology is being used to make decisions about them at work. The way in which these decisions have been made must be easy to explain and understand. And there should be enough information available to workers and job applicants about the technology to ensure they can trust it will operate fairly.

⁷⁸ <https://www.acas.org.uk/acas-code-of-practice-on-time-off-for-trade-union-duties-and-activities>

Employers should negotiate collective agreements with trade unions on the introduction of new technologies and data, including any workplace surveillance and monitoring, with trade unions before they are implemented to ensure worker's interests are respected.

As part of a transparent working environment, workers should have the right to human review of decisions made by AI in the workplace which are high-risk and the right to insist that they can interact with a human being rather than a machine or algorithm when high-risk decisions are being made about them.

Costs of homeworking

Where it is agreed that work should be primarily carried out at home, employers should provide and maintain the equipment necessary for home workers to work safely and effectively. Employers should recognise that workers will experience inequalities in their homes, for example, the amount of space and furniture available to them. Equipment should therefore include all items needed by these workers not just IT equipment. Working from home can come with additional expense as costs are passed from the employer to the worker. Employers should provide support towards additional costs associated with home working such as heating and any upgrades required to achieve a secure and reliable internet connection.

Health and Safety

Employers should not only meet regulatory health and safety obligations, but also promote decent work practices and standards agreed with the workforce. Employers should conduct risk assessments for those working from home accompanied by a trade union health and safety rep. These should include both physical and mental health, including the impact of isolation on the mental health and wellbeing of homeworkers.