



Changing the world
of work for good

Making flexible working the default

**A TUC report on public responses to the
BEIS consultation on flexible working**

Executive Summary

In the 2019 Conservative manifesto, the party pledged to consult on making flexible working the default unless employers have good reasons not to. This consultation has since been published on 23 September 2021 and closed for submissions on 1 December 2021¹. The consultation stated that ‘a world class approach to flexible working is a key part of the Government’s ambition to build back better, ensuring that our flexible labour market is primed for the opportunities and challenges of the post Covid-19 economy’².

The experience of the pandemic has significantly changed the landscape of flexible working. The numbers of people who worked from home during the Covid-19 pandemic (around one third of the workforce³) and unequal access to other types of flexible working for those who cannot has sparked public conversations about what the future of work should look like, including where, how and when we work⁴.

There is widespread recognition of the role that flexible working can play in ensuring certain groups, including women, disabled workers and older are able to access and stay in work. Making flexible working available in all but the most exceptional of circumstances is essential for promoting greater gender equality. Research has shown that many of the underlying causes of the gender pay gap are connected to a lack of quality jobs offering flexible work⁵. Due to the unequal division of unpaid care and the lack of flexible working in jobs, women often end up in lower paid part-time work⁶.

In addition, the disability employment gap in 2020/21 was 28.7 percentage points and the unemployment rate for disabled workers in 2020/21 was eight per cent, almost double that of non-disabled workers (four per cent). Disabled workers also experience a significant pay gap. In 2020/21, median hourly pay for disabled employees was £1.90 lower than it was for non-disabled employees⁷. Disabled workers have a different set of rights, and access changes to hours or location through the reasonable adjustment provisions set out in the Equality Act 2010. However, increased access to flexible working for everyone would help to

¹ <https://www.gov.uk/government/consultations/making-flexible-working-the-default>

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/101952/6/flexible-working-consultation.pdf page 3.

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

⁴ <https://www.tuc.org.uk/sites/default/files/2021-07/Flexibleworkingreport3.pdf>

⁵ <https://timewise.co.uk/article/article-real-reasons-behind-gender-pay-gap/>

⁶ <https://www.tuc.org.uk/sites/default/files/2019-10/BEISFlexibleworking.pdf>

⁷ <https://www.tuc.org.uk/research-analysis/reports/jobs-and-recovery-monitor-disabled-workers#:~:text=Disabled%20people%20experience%20significant%20barriers,it%20was%2028.6%20percentage%20points.>

ensure disabled workers could work flexibly without being treated with stigma or discriminated against.

Another key group to consider are older workers. In less than 20 years, one in four people in the UK will be over 65⁸. In many ways this trend of lengthening working lives is a positive development. It reflects the fact that current generations are living longer than previous generations, and extending working lives has a key part to play in ensuring workers can maintain a decent standard of living in old age. However, whilst many chose to retire before reaching state pension age, one in eight are forced out by ill health, and others are unable to fit work around caring responsibilities⁹. Stronger rights to flexible working would benefit older workers managing long-term health conditions or with increased caring responsibilities to stay in work longer should they want to. In an ONS survey¹⁰ of adults aged 50 to 70 who had left or lost their jobs since the start of the pandemic, almost one quarter (23 per cent) said flexible working would encourage them to return to work.

We must make sure that flexibility is available to everyone. Previous TUC research¹¹ has shown that those who have worked from home during the pandemic are more likely to be offered flexibility in the future. 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 being available to all, we need to ensure that flexible working benefits workers. 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.

The TUC welcomed the opportunity to submit a response to the consultation. Given that four in five workers in the UK want to work flexibly and the benefits of flexible working for so many groups, we also felt it was essential that working people were given the same opportunity to share their experiences and insights with the government, helping to ensure that the voices of working people shape the government's response.

Therefore, the TUC and Flex For All partners – Mother Pukka, Pregnant then Screwed, Fatherhood Institute, Young Women's Trust, Fawcett Society, Working Families and Gingerbread created an online tool where members of the public could submit a response to the consultation. The online version contained a simplified and shortened version of the original 57-page consultation document and allowed people to send their views directly to BEIS.

⁸ <https://ageing-better.org.uk/sites/default/files/2021-11/Summary-flexible-working-pilot-projects-evaluation.pdf>

⁹ <https://www.tuc.org.uk/research-analysis/reports/extending-working-lives-how-support-older-workers>

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<https://www.ons.gov.uk/employmentandlabourmarket/peoplenotinwork/economicinactivity/bulletins/earlyinsightsfromtheover50slifestylestudygreatbritain/1march2022>

¹¹ <https://www.tuc.org.uk/sites/default/files/2021-07/Flexibleworkingreport3.pdf>

This report contains a summary of what 5744 members of the public told BEIS. We urge the government to listen to the voices of working people and ensure their experiences are included in their plans for amending flexible working legislation.

The government consultation focuses on adjusting the law so that employees can make a flexible working request from day one of the job rather than having to wait 26 weeks as employees do now. The TUC believes this does not go far enough to ensure that all workers have access to flexible working. Previous TUC research has demonstrated why a request-based system does not work and therefore making the right to request flexible working a day one right will not lead to increased access to flexible working. This is largely because many workers do not ask for flexible working for fear of rejection or negative treatment, three in ten flexible working requests are denied and those who do work flexibly experience negative treatment as a result¹².

The failures of a request based system are also demonstrated in national statistics. Despite the length of time legislation has been in place, it has not increased access to flexible working. The proportion of employees doing no form of flexible working (under the Labour Force Survey definition) has only changed by 4 percentage points, from 74 per cent to 70 per cent between 2013 and 2020¹³.

The responses from the public to the consultation also demonstrates the pitfalls of a right to request system. In consultation responses people told the government that:

Flexible working is essential for them to be able to work.....

The large majority of people who sent a consultation response (87 per cent) wrote in their answers that parenting was a key reason that flexible working was important to them. In addition, one in fourteen (seven per cent) respondents told us in their answer that flexible working was important to them because they were disabled or had a health condition and one in twenty-five (four per cent) stated that flexible working was important due to other caring responsibilities.

A key theme in consultation responses was that without flexible working, people were placed in an impossible situation of having to reduce hours, take unpaid leave or leave work altogether. Flexible working is essential for people to be able to support their families and, in turn, contribute to the economy.

- *The company officially denied my request for flexible hours after a month of returning to work, forcing me to quit and leaving me, a single mother, with no job and no means of income.* Single mum, unemployed/looking for work
- *Without flexible working my hours would halve and my prospects with disappear.* Working mum, public sector.

¹² https://www.tuc.org.uk/research-analysis/reports/denied-and-discriminated-against#_ftn15

¹³ <https://www.tuc.org.uk/sites/default/files/2021-07/Flexibleworkingreport3.pdf>

People also told us that flexible working was beneficial for their mental health, improved their productivity, addressed barriers they faced as older workers and was better for work life balance.

But they do not feel comfortable asking about flexible working in job interviews.....

Mums, dads, disabled workers and so many others need flexible working to be able to work and therefore cannot risk waiting until they are in a job before they ask. The government's proposal of a day one right to request would mean workers who need flexibility would be forced to ask on their first day of a job or during the recruitment process.

However, three quarters (76 per cent) of people shared in their responses that they would not feel comfortable asking for flexible working in a job interview and only around two in ten (21 per cent) said they would. For many people this was because they feared they would be viewed negatively as a result.

- *I know the minute you mention it, you pretty much take yourself out of the running for the job.* Single mum, unemployed/looking for work.
- *I would be worried about being immediately categorised as a trouble maker, or someone who was unreliable. I'd be concerned the job would go to someone without kids or a man.* Working mum, sector not provided.

It would therefore be far easier if flexible working options were included in job adverts.....

Almost all of those who sent in consultation responses (97 per cent) said it would help if the types of flexible working available in a role were included in job adverts. Respondents felt this would save them time in their job search, remove the stigma of asking for flexible working and make the whole process far more transparent.

- *This is a game changer. Transparency from the get-go means we can have a proper conversation with the hiring team and not be riddled with anxiety about when to bring it up.* Mum, unemployed/looking for work

Having flexible working options in job adverts would mean that people know before applying what flexibility would be available to them, addressing barriers that those who need flexibility face in recruitment and would also serve to normalise flexible working.

And when they do ask requests are turned down too easily.....

The government consultation also asks if the business reasons that employers can use to reject flexible working requests should be amended. Overwhelmingly, people who sent in responses said they should. Almost nine in ten (87 per cent) of those who sent consultation responses believed that employers can turn down flexible working requests too easily, with only seven per cent believing they couldn't.

Respondents felt the broad nature of the business criteria meant that employers could turn down any and all requests and meant employers did not have to consider flexible working requests thoroughly.

- *The business reasons are very broad and extremely vague, meaning it is so easy to say no without giving it sufficient thought. Working mum, private sector.*

Recommendations

If the government truly wants to make flexible working the default, they must do more than tinker round the edges of failed flexible working legislation. The consultation focuses on making the right to request flexible working a day one right, instead to unlock the flexibility in all jobs and for all workers the government should introduce:

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 that no form of flexible working is suitable in the job advert and why. All roles should be deemed suitable for flexible working unless it can be shown that the unavailability of flexible working is a proportionate means of achieving a legitimate aim. Flexible working legislation would reflect objective justification as set out in the Equality Act 2010.
2. a day one right to request flexible working for all workers, with the criteria for rejection mirroring the objective justification set out above. This would replace the current business reasons. Workers should have a right to appeal and no restrictions on the number of flexible working requests made.

Members of the public were almost unanimous in supporting these solutions in their consultation responses, as:

- 98 per cent of those who responded stated in their responses that employers should have to include the possible flexible working options in all job adverts, with employees having the right to take these up from their first day in the job.
- 96 per cent of those who responded stated that there should be far fewer permitted reasons why employers are legally allowed to turn down flexible working requests
- 96 per cent of those who responded stated employers should have to respond to flexible working requests more quickly, and there should be no limits on the number of times employees can request flexible working.

The government must also take steps to ensure that flexible workers do not experience negative impacts on their health and wellbeing from excessive working hours by

introducing a statutory right for employees and workers to disconnect from their work so as to create “communication free” time in their lives.

If the government genuinely wants to make flexible working the default, we cannot continue to rely on a system based on individuals asking nicely and hoping for the best. The government consultation offers a real opportunity to deliver the change needed to unlock the flexible working opportunities contained in all job roles and to make genuine flexible working the norm. This would transform the lives of working people across the country. We urge the government to listen to the 5,744 people who responded to the consultation and ensure the views of working people are reflected in their decisions.

Introduction

What rights do workers currently have?

Flexible working is any type of work arrangement that gives flexibility in how long, where and when people work. It includes flexi-time, remote and home working, mutually agreed predictable hours and compressed hours.

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). 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 permitted¹⁴.

The benefits of flexible working

Flexible working is essential for certain groups to be able to work. Making flexible working available in all but the most exceptional of circumstances is essential for promoting greater gender equality. Research has shown that many of the underlying causes of the gender pay gap are connected to a lack of quality jobs offering flexible work¹⁵. Due to the unequal division of unpaid care and the lack of flexible working in jobs, women often end up in part-time work. 75 per cent of part-time workers are women and are paid less than full-time workers with equivalent qualifications¹⁶.

Making flexible working the norm and available to all workers, including working dads, will help to equalise caring responsibilities allowing dads to spend more time with their families

¹⁴ <https://www.acas.org.uk/making-a-flexible-working-request>

¹⁵ <https://timewise.co.uk/article/article-real-reasons-behind-gender-pay-gap/>

¹⁶ <https://www.tuc.org.uk/sites/default/files/2019-10/BEISFlexibleworking.pdf>

as well as tackle the discrimination women face at work¹⁷. Action to address gender inequality is even more urgently needed given the impact of the pandemic on women.

In addition, it would help to reduce the disability employment and pay gaps. The disability employment gap in 2020/21 was 28.7 percentage points and the unemployment rate for disabled workers in 2020/21 was eight per cent, almost double that of non-disabled workers (four per cent)¹⁸.

Disabled workers also experience a significant pay gap. In 2020/21, median hourly pay for disabled employees was £1.90 lower than it was for non-disabled employees. This means that non-disabled employees earn 16.5 per cent more than disabled colleagues. And the pay gap is much higher for disabled women - £3.50 per hour. This is particularly significant during the pandemic when we know disabled workers have been more likely than non-disabled workers to have seen a hit to household finances¹⁹.

Disabled workers have a different set of rights, and access changes to hours or location through the reasonable adjustment provisions set out in the Equality Act 2010. However, increased access to flexible working for everyone would help to ensure disabled workers could work flexibly without being treated with stigma or discriminated against.

Another key group to consider are older workers. In less than 20 years, one in four people in the UK will be over 65²⁰. In many ways this trend of lengthening working lives is a positive development. It reflects the fact that current generations are living longer than previous generations, and extending working lives has a key part to play in ensuring workers can maintain a decent standard of living in old age. However, whilst many chose to retire before reaching state pension age, one in eight are forced out by ill health, and others are unable to fit work around caring responsibilities²¹.

Recent TUC research also found that the number of older workers who have left the labour market due to sickness and ill health (97,000) is nearly twice the rate of those who have retired (50,000) during the pandemic. BME workers and those in low-income jobs far more likely to have to stop work early for health reasons²².

Stronger rights to flexible working would benefit older workers managing long-term health conditions, needing to reduce their workload or with increased caring responsibilities to

¹⁷ <http://www.fatherhoodinstitute.org/2021/fathers-seek-more-home-flexible-working-to-maintain-covid-transformation-in-childcare/>

¹⁸ <https://www.tuc.org.uk/research-analysis/reports/jobs-and-recovery-monitor-disabled-workers#:~:text=Disabled%20people%20experience%20significant%20barriers,it%20was%2028.6%20percentage%20points.>

¹⁹ <https://www.tuc.org.uk/research-analysis/reports/jobs-and-recovery-monitor-disabled-workers#:~:text=Disabled%20people%20experience%20significant%20barriers,it%20was%2028.6%20percentage%20points.>

²⁰ <https://ageing-better.org.uk/sites/default/files/2021-11/Summary-flexible-working-pilot-projects-evaluation.pdf>

²¹ <https://www.tuc.org.uk/research-analysis/reports/extending-working-lives-how-support-older-workers>

²² <https://www.tuc.org.uk/research-analysis/reports/older-workers-after-pandemic-creating-inclusive-labour-market>

stay in work longer should they want to. In an ONS survey²³ of adults aged 50 to 70 who had left or lost their jobs since the start of the pandemic, almost one quarter (23 per cent) said flexible working would encourage them to return to work. Research has also shown introducing flexible working for the over 50s can result in a better work life balance, greater sense of focus when at work and a greater sense of value and recognition²⁴.

In addition, flexible working has been associated with better work life balance, improved wellbeing, improving the experience of work for carers and improving productivity, increased staff retention and better recruitment²⁵.

We must make sure that flexibility is available to everyone. Previous TUC research²⁶ has shown that those who have worked from home during the pandemic are more likely to be offered flexibility in the future. 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 being available to all, we need to ensure that flexible working benefits workers, helping them to balance home and work lives. 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.

The government consultation

In the 2019 Conservative manifesto, the party pledged to consult on making flexible working the default unless employers have good reasons not to. This consultation has since been published on 23 September 2021 and closed for submissions on 1 December 2021²⁷. The consultation stated that 'a world class approach to flexible working is a key part of the Government's ambition to build back better, ensuring that our flexible labour market is primed for the opportunities and challenges of the postCovid-19 economy'²⁸

The consultation recognised many of the benefits of flexible working, in particular the benefits for older workers, carers and parents and disabled workers, and stated the business case for flexible working was clear.

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<https://www.ons.gov.uk/employmentandlabourmarket/peoplenotinwork/economicinactivity/bulletins/earlyinsightsfromtheover50slifestylestudygreatbritain/1march2022>

²⁴ <https://ageing-better.org.uk/sites/default/files/2021-11/Summary-flexible-working-pilot-projects-evaluation.pdf>

²⁵ https://www.tuc.org.uk/research-analysis/reports/future-flexible-work?page=2#section_header

²⁶ <https://www.tuc.org.uk/sites/default/files/2021-07/Flexibleworkingreport3.pdf>

²⁷ <https://www.gov.uk/government/consultations/making-flexible-working-the-default>

²⁸

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/101952/6/flexible-working-consultation.pdf page 3.

Despite this recognition of the importance of flexible working, the consultation proposals to reform flexible working legislation fall far short of what the TUC would consider is needed to truly make flexible working the default way of working. The consultation considered the following:

- allowing employees to ask for flexible working from their first day in a job
- whether the eight business reasons for refusing a request all remain valid
- requiring an employer to suggest alternatives if flexible working requests are denied
- if the limits on the number of requests that can be made remain appropriate and if the length of time employers have to respond to a request should be changed
- requesting temporary arrangements.

The consultation specifically stated that statutory flexible working needs to start with a conversation between the employer and employee, which should begin with an employee request.

Previous TUC research has demonstrated why a request-based system does not work and therefore making the right to request flexible working a day one right will not lead to increased access to flexible working. This is largely because many workers do not ask for flexible working for fear of rejection or negative treatment. In a recent TUC survey of working mums, more than four in 10 respondents (42 per cent) stated they would not feel comfortable asking about flexible working in a job interview²⁹.

It is also because when working people do ask, they are rejected - three in ten flexible working requests are denied³⁰ and because those who do work flexibly experience negative treatment as a direct result. In the same TUC survey of working mum, more than eight in 10 (86 per cent) of mums working flexibly told us they had experienced disadvantage and discrimination as a result³¹. This mirrors findings in a study done by the EHRC and BEIS³². Poor treatment of flexible workers is precisely because flexible working is not the norm and stigma attached to flexible working is often rooted in sexist assumptions about mum's commitment to work³³. This stigma means that anyone who wants to work flexibly is often met with rejection or negative treatment.

Additionally, despite the length of time legislation has been in place and the incremental broadening of its scope, it has not brought about the changes intended. The proportion of employees doing no form of flexible working (under the Labour Force Survey definition) has only changed by 4 percentage points, from 74 per cent to 70 per cent between 2013 and 2020³⁴.

²⁹ <https://www.tuc.org.uk/sites/default/files/2021-10/Report.pdf>

³⁰ <https://www.tuc.org.uk/sites/default/files/2019-10/BEISFlexibleworking.pdf>

³¹ https://www.tuc.org.uk/research-analysis/reports/denied-and-discriminated-against#_ftn15

³² <https://www.equalityhumanrights.com/en/managing-pregnancy-and-maternity-workplace/pregnancy-and-maternity-discrimination-research-findings>

³³ <https://link.springer.com/article/10.1007/s11205-018-2036-7>

³⁴ <https://www.tuc.org.uk/sites/default/files/2021-07/Flexibleworkingrepor...>

The TUC believe a key element of making flexible working the default is for employers to include possible flexible working options in job adverts. Therefore, removing the onus on the individual to ask and means that those who need flexible working know what is possible before they start a job. The consultation has stated that the Government does not feel that now is the right time to introduce a statutory requirement for employers to say in job adverts whether flexible working is available. Instead that a day one right to request would nudge employers to think about flexible working options early in the job design and recruitment process and give employees the confidence to request flexible working³⁵.

We know however, from gender pay gap reporting that an approach of encouraging employers to voluntarily provide certain information is largely ineffective,

Sustained government action promoting a voluntary approach to the gender pay gap resulted in 280 employers signing up to the scheme, but only five employers actually went on to publish their data. However, when mandatory reporting was introduced more than 10,000 employers reported their gender pay gap in the first year– close to 100 per cent compliance³⁶.

Our previous survey of working mums, cited above, demonstrates there are very low levels of confidence around asking for flexible working in job interviews because of the likelihood of being rejected or receiving negative treatment.

Our campaign on the consultation

Given that four in five workers in the UK want to want flexibly in the future³⁷, we believed the government had to hear from working people as part of this consultation. The consultation was open to employees as well as employers, business representative groups, unions and those representing the interests of groups in the labour market. Despite being open to employees many of the questions were directed at employers and were available via a complex and lengthy consultation document which required some knowledge of the current flexible working legislation.

The TUC believes it is essential for the government to hear the views of working people, what is important to them and how they think legislation should be changed. People know their jobs and what flexible working is possible.

Therefore, the TUC and Flex For All partners – Mother Pukka, Pregnant then Screwed, Fatherhood Institute, Young Women’s Trust, Fawcett Society, Working Families and Gingerbread created an online tool where members of the public could submit a response to the consultation. The online version contained a simplified and shortened version of the questions and allowed people to send their views directly to BEIS.

The questions aimed to demonstrate the flaws with a request-based system and why it needs reforming, but also problems with the reasons employers can reject flexible working requests and the length of time it takes to review requests. The questions in our online tool asked whether people would feel comfortable asking for flexible working in a job interview,

³⁵ <https://www.gov.uk/government/consultations/making-flexible-working-the-default>

³⁶ <https://www.gov.uk/government/publications/think-act-report>

³⁷ <https://www.tuc.org.uk/sites/default/files/2021-07/Flexibleworkingreport3.pdf>

if they think employers can too easily turn down requests and how long they have had to wait for a response. We also asked if it would help if flexible working options were included in job adverts.

5,744 people took part and sent their views directly to BEIS. This report summarises what they told the government. We urge BEIS to use these findings to inform what they do next on flexible working.

Findings

The findings are laid out under the questions we asked.

Question 1: Please explain why flexible working is important to you.

The large majority of people who sent a consultation response wrote in their answers that parenting was a key reason that flexible working was important to them. Almost nine in ten (87 per cent) of respondents stated in their answer they were parents. This includes three per cent of respondents who told us they were single parents (95 per cent of those who mentioned they were single parents were women) and two per cent shared that their child was disabled or had a health condition that increased their requirements for flexible working, for example to attend medical appointments.

One in fourteen (seven per cent) respondents told us in their answer that flexible working was important to them because they were disabled or had a health condition and one in twenty five (four per cent) stated that flexible working was important due to other caring responsibilities, for example the care of elderly family members.

The following themes were identified in the responses.

Flexibility is essential to be able to work

Being able to remain in work

In these answers, many respondents stated how important flexible working was to them being able to access and stay in work in general.

- *I am a mother of two young children, flexibility is paramount to me being able to work - full stop! Working mum, private sector.*
- *Flexible working means we have a shot at making all of our responsibilities work, otherwise, I would have to quit my job and focus on caring for everyone. Working mum, private sector.*
- *I have been unemployed for 4 years following finishing university as a qualified social worker because there have been zero opportunities to find accessible, flexible work. I finally found an opportunity this year and got the job, at a company built by people*

with chronic illness and designed to offer such opportunities. I have struck gold but so many won't have that chance as such opportunities are so rare currently. Disabled woman, private sector.

- *The flexibility affords me a couple of days a week to do the school run whilst enabling me to have a career I am proud of and will allow me to seek promotion. Without flexible working my hours would halve and my prospects with disappear. Working mum, public sector.*

Loss of work due to a lack of flexibility

In contrast, three per cent of people in answer to this question indicated they had left a job due to lack of flexible working. The quotes demonstrate the enormous impact this has on people's lives and supporting their families.

- *I am a teacher with a two year old and husband who works shifts and no family nearby to support us. My part time request was refused twice so I've handed in my notice with no job lined up. Working mum, sector not provided*
- *I had to give up my job in software design due to my employer being unwilling to make it accessible by allowing me to work at home some of the time. Disabled woman, self-employed.*
- *I've only just quit my job after working there for over 11 years. I was denied flexible working patterns as I had a management position and they claimed I can't do my job being home despite me doing this for one and a half years during the pandemic. Woman, unemployed/looking for work.*
- *The company officially denied my request for flexible hours after a month of returning to work, forcing me to quit and leaving me, a single mother, with no job and no means of income. I am now struggling to find a job to support me and my daughter as there are very little jobs out there that will accommodate nursery times. Paying bills is impossible and paying for food every week is a struggle. Single mum, unemployed/looking for work.*

Loss of hours, pay and conditions due to a lack of flexibility

Many indicated that a lack of flexible working meant they had to work less hours than they would like, take unpaid leave to manage their responsibilities or take low paid or more insecure work.

- *Currently I have to take unpaid leave whenever my child is poorly even though I could do my role from home - this causes me financial difficulties and stress. Working mum, public sector.*
- *I am looking at reducing my hours in work solely so I can do the school run at least two days a week. If flexible hours were an option I could keep my hours/salary/career as well as my main priority of being a mum. Working mum, private sector.*
- *Inflexible jobs make it almost impossible, I've had to cut down to only 2.5 hours a week because no jobs give me the flexibility I need. Working mum, public sector.*

- *As a parent with a chronic illness, with an autistic child, I have to fit my work life around my home life. Having flexible hours would mean more job opportunities for myself, a chance for a decently paid job. Currently I work in a very low paid sector because this is all I could find to fit around my home life.* Disabled working mum, charity/voluntary sector.
- *The only reason I'm now self-employed is the flexibility it allows and the relieves the pressure - however it comes with lack of security, regular income, support network/community/colleagues and periods of no work at all.* Disabled woman, self-employed.

The responses to the question overwhelmingly demonstrate how important flexible working is for people to be remain in employment. Without flexible working people are left in an impossible situation they are forced to reduce their hours at work, take unpaid leave, or leave their job altogether to manage their health, caring responsibilities and other demands outside of work.

Flexible working is good for the economy

As well as the benefits flexible working provides to individuals, respondents commented on the importance of flexible working for the overall economy.

- *Flexible working allows one to accommodate the demands of childcare with having a viable career and generating income for both ones household and the economy.* Working mum, private sector.
- *It's a really old fashioned way of working that freezes skilled and talented people out of employment which negatively impacts on the economy.* Woman, public sector.
- *It means I can continue to do my job and raise my child. I can continue to contribute to the economy, pay taxes and earn at the level I achieved prior to having a child.* Working mum, public sector.
- *There is no reason I and many other disabled people should not be able to be contributing members of society.* Disabled woman, private sector.

Respondents observations to the benefits to the economy are supported by recent research by Mother Pukka and Sir Robert McAlpine which found that current levels of flexible working contribute £37 billion a year to the UK economy³⁸.

Respondents also noted that flexible working would contribute to reducing the gender pay gap.

- *Normalise flexible working, strengthen the economy and close the gap between women and men.* Working mum, public sector.
- *Without flexible working and more available childcare, it is going to continue to push women out of the work place.....I'm a social worker, we have a national shortage of*

³⁸ <https://www.motherpukka.co.uk/wp-content/uploads/2021/12/2021-11-12-CONFIDENTIAL-Flexonomics-a-report-by-Pragmatix-Advisory-for-Sir-Robert-McAlpine-and-Mother-Pukka-2.pdf>

qualified workers and I don't think this is a coincidence when the majority of the work force are female. Working mum, public sector.

- *Flexible working is the only way to close the gender pay gap - without this option too many women are being forced to sacrifice career opportunities for unpaid caring roles. Mum, Unemployed/looking for work.*

The importance of flexible working in allowing people to work cannot be overstated. In previous survey done by the TUC³⁹, nine in 10 mums who worked flexibly (92 per cent) said that they would find it difficult or impossible to do their job without it. Almost two in three (64 per cent) stated flexible working was 'Essential – I wouldn't be able to do my current job without flexible working', with over a quarter (28 per cent) saying it was 'Important – it would be difficult to manage my current job without flexible working'. This rose amongst low paid women– 75 per cent of whom said flexible working was essential, disabled women – 73 per cent said flexible working was essential and single mums - 70 per cent said flexible working was essential.

Addresses barriers to older workers

A small number of respondents did indicate that their age and how close they were to retirement was a reason for wanting flexible working. The issues they highlighted demonstrate how important flexible working can be for older workers to manage workplace ageism, their health and caring responsibilities.

- *As an older woman the ability to work from home and not have the stress of the commute is really important. Also it saves me the daily subversive ageism that I face in the office. I hate the days I have to go in. Woman, charity/voluntary sector.*
- *My health is deteriorating as I get nearer to retirement. It's familial DNA. I would last a lot longer if I didn't have the hassle of public transport, getting more infections unnecessarily. Woman, public sector.*
- *I am a woman over state pension age but have insufficient pension to retire. I have a 2 year old grandson. Flexible working allows me to continue to work part time 3 days a week and to provide care for my grandson for 2 days a week. Woman, public sector.*

The cost of childcare

In addition, respondents told us of many other reasons why flexible working was important to them. Just under one in six respondents (15 per cent) specifically mentioned that flexible working helps them to manage expenses associated with work, the main example being the high cost of childcare. Flexible working is not a substitute for a good quality, affordable childcare system; all working parents should have access to both. However, a number of respondents stated that flexible working was important in helping to manage the high cost of childcare.

³⁹ <https://www.tuc.org.uk/sites/default/files/2021-10/Report.pdf>

- *I am able to take my lunch break late in the day (at 3pm) to go and collect my son from school as I now work from home full time. In my previous job (until June 2021) I was unable to do this as I worked in an office. This led to an extremely long day for my son (7.30am-6pm) and we had huge childcare bills for wraparound care. Working mum, private sector.*
- *We simply cannot afford wraparound care for 2 kids, flexible working would allow me to do drop off and pick up and reduce my childcare cost by one day. Working mum, private sector.*
- *Childcare is extortionate and not affordable to most people 5 days a week. So if parents are to be allowed a career, then they need flexibility to manage both work and childcare. Mum, employment status other.*

Work life balance

One in ten respondents (11 per cent) also mentioned other benefits of flexible working, largely related to work life balance. Flexible working was important to people for education and study:

- *I am currently trying to change jobs and so while my counselling training is currently part time, next year I will need 1 full day to complete my studies. Woman, charity/voluntary sector.*

To deal with grief:

- *Over lockdown I lost two family members closely together and being able to work remotely, and take time away when I was overwhelmed, ensured I could continue work throughout the year instead of having to quit my job or ask a sabbatical. Woman, private sector.*

To volunteer and be active in their communities:

- *I also use flexible working to carry out unpaid volunteering roles in my local community. Woman, public sector.*

To decrease time spent on travel or to be able to manage unpredictable travel more easily.

- *I have a very long commute, so being able to work from home has been great for work life balance, and health as well as I'm able to exercise now. Woman, public sector.*
- *Needing to rely on public transport is an important factor, buses and trains run according to their own timetables and don't fit neatly into a work schedule. Man, retired.*

Benefits to health

One in fifteen (6 per cent) explicitly told us in their response to question one that flexible working has a positive contribution on wellbeing or mental health.

- *I think flexible working is better for everyone's mental health. It allows people to have an effective work and personal life balance. Woman, public sector.*

- *I got used to more flexible working during the pandemic and it was incredibly beneficial to my mental health. Working mum, private sector.*
- *Flexible working is important to me as it allows a smoother work life balance which leads to greater wellbeing and less stress. Woman, private sector.*

It is also important to note that respondents who stated they were disabled or had health conditions, highlighted the importance of flexible working in ensuring their condition did not worsen, or very worryingly some indicated that a lack of flexible working had contributed to poor health.

- *I have a disability and inflexible working is negatively impacting...my health and wellbeing. Further, it is actually putting me at risk in the workplace. Disabled woman, public sector.*
- *Without flexible working I am always required to put my job first and my health second... Diabetes comes with a requirement for a lot of hospital appointments and doctor's appointments and without flexible working I have to constantly cancel appointments because I can't get the time off required to attend them, sometimes that means waiting an extra 6 or 9 months before I get another one. Disabled woman, unemployed/looking for work.*
- *Flexible working is important to me as a disabled person because I don't have to choose between managing my health and pursuing my career which helps me to maintain independence and continue my recovery. Disabled woman, sector other.*

Improved productivity

Finally, there is a weight of existing research indicating that flexible working benefits employers by boosting productivity, improving recruitment and increasing retention⁴⁰. This also came across in the answers provided by respondents.

- *Because it allows access to the workplace for people with outside responsibilities, creating a more diverse and representative workforce and more dynamic working methods. This ultimately makes a better and more productive workplace for everyone. Woman, self-employed.*
- *Allowed a better work life balance for the employee which promotes better health and wellbeing. In turn, when the employee is at work they feel valued and appreciated [sic] and able to be their best self and the most productive they can be. Woman, public sector.*
- *Flexibility means I get to choose and perform better without pressure and it allows for personal growth, better working relationships and increased confidence in employers. Working dad, public sector.*

40

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1019526/flexible-working-consultation.pdf

Question 2: Asking for flexible working in a job interview.

The government consultation included proposals to make the right to request flexible working a day one right. Those who need flexible working in order to work (as indicated in answers to question one), need to know before they start whether they can work flexibly. This would therefore mean asking about the availability of flexible working at interview or during the recruitment process.

Previous research has shown that negative workplace cultures and stigma connected to flexible working put people, particularly women with caring commitments, off asking for flexible working. Research conducted by BEIS and EHRC in 2016 found that nearly two in five (38 per cent) mothers did not request the 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.

In a recent TUC survey of working mums, more than four in 10 women respondents (42 per cent) stated they would not feel comfortable asking about flexible working in a job interview, mainly because they thought it would be held against them by the employer, leading to them being automatically rejected. Only 37 per cent said they would feel comfortable raising this.

In answer to question 2, around three quarters (76 per cent) of those who sent consultation responses gave answers that indicated they would not ask for flexible working in a job interview or wouldn't feel comfortable doing so, with only two in ten (21 per cent) stating that they would feel comfortable asking.

For respondents who we identified as women⁴¹, 77 per cent said they would not feel comfortable compared to 21 per cent who said they would. In comparison, just under two thirds of men (64 per cent) said they would not feel comfortable, with almost three in ten (28 per cent) said they would feel comfortable.

Previous research has demonstrated that stigma towards flexible working is rooted in sexist views of women's commitment to their jobs, particularly when they have caring commitments and that women are more likely to suffer from discrimination in relation to flexible working. This may impact on how comfortable women feel asking for flexible work at interview or during recruitment in comparison to men⁴².

Reasons for not asking – fear of not getting the job

For those who said they would not feel comfortable, the reasons given included the fear that the employer would simply give the job to someone else.

- *Petrified.... I may as well tell them I don't want it, ...why would they choose me over someone else who doesn't need it!* Working mum, public sector.

⁴¹ Please see the methodology section on how gender was established.

⁴² <https://link.springer.com/article/10.1007/s11205-018-2036-7>

- *I feel that people without caring responsibilities would be given the job, purely down to ease. Working mum, public sector.*
- *Applications are competitive and I would definitely feel as if I was adding a complication to my application by requesting flexible working so early on. I have in the past, been beaten to posts by other non parents who are much less experienced than I, because I was not able to work the same hours or offer the same level of flexibility due to having children. Working mum, private sector.*
- *I would not feel comfortable asking upfront for flexible working because I think employers, when faced with line-up of candidates would not be able to resist the ease of a full time candidate over a part time. Working mum, sector other.*
- *I try to hide my disability as I know I don't get work if I show need for adjustments including flexibility. Disabled woman, charity/voluntary.*
- *I know the minute you mention it you pretty much take yourself out of the running for the job. Single mum, unemployed/looking for work.*

Reasons for not asking - negative attitudes towards flexible working

Respondents also referred to the negative attitudes and assumptions that employers have towards flexible workers and flexible working, which would put them off asking in a job interview.

- *I would not ask for flexibility in a job interview as I think there's a stigma, with flexibility equalling unreliability...my experience has shown that it actually increases engagement, productivity, and retention. Working mum, private sector.*
- *I would feel uncomfortable as I feel that flexible or part time working is frowned upon and it makes employers think you aren't committed to the company. Working mum, public sector.*
- *I would be worried about being immediately categorised as a troublemaker, or someone who was unreliable. I'd be concerned the job would go to someone without kids or a man. Working mum, sector not provided.*
- *As I worked in HR and recruitment for years I have lots of first-hand experience of managers having negative perceptions of people asking for flexible hours in interviews- thinking they are already difficult/ demanding/ inflexible/ at risk of having more children/ not serious about the job. There is a culture of negativity around flexible working and it being an inconvenience to the workplace. Working mum, sector other.*
- *Already being disabled, I would find it difficult to ask for flexible working from the outset, since already unconscious (and possibly conscious) bias makes it very difficult in securing employment. Employers tend to think about what it might cost them to employ a disabled person. Non-disabled people in general think disabled people are not as capable as non-disabled people, but with the right help we are as good if not better! Disabled woman, public sector.*

The view that employers hold negative views of flexible working are not unfounded. In a previous TUC survey of working mums⁴³, more than eight in 10 (86 per cent) of mums working flexibly told us they had experienced disadvantage and discrimination as a result. This echoes research conducted by BEIS and EHRC⁴⁴ which revealed that over half (51 per cent) of women had experienced discrimination or disadvantage as a direct result of having a flexible working request approved.

Those who do feel comfortable asking

One in twenty (21 per cent) of people who sent consultation responses said they would feel comfortable asking. However, amongst those who said they would ask, the following themes were identified.

Only if flexibility was included in the job advert

Some respondents also specifically mentioned that they would only ask in a job interview if it was explicitly mentioned in the job advert, indicating that employer transparency is key to starting a conversation on flexible working.

- *If it wasn't mentioned on the advert I'd be very nervous to as I'd worry they'd rule me out as a potentially difficult employee who would be off work all the time. Working mum, public sector.*
- *I would only feel comfortable if it had been explicitly stated in the job spec, or they welcomed questions about flexibility in advance. Working mum, public sector.*
- *Unless it had been stipulated in the advert or I knew someone who already worked there and could tell me it was an option, I would feel uncomfortable requesting it. Working mum, public sector.*

There is no other option

There were those who would ask but would feel uncomfortable doing so and some indicated that they would ask but knew it would impact of the possibility of them getting the job. Others shared that because flexible working as essential for them, they felt they had no option other than to ask despite the potential negative consequences.

- *I would feel able to ask, but might be somewhat uncomfortable. However, because it's make or break for me, I wouldn't be able to take a job without the flexible working option, I would have to ask. Working mum, private sector.*
- *I would be happy to ask for flexible hours but would do so sadly knowing it might significantly impact my chances of getting the role. Working mum, private sector.*
- *I have asked for flexible working in an interview and it was uncomfortable. I felt like I had to be apologetic for even asking. They said no. Working mum, public sector.*

⁴³ <https://www.tuc.org.uk/sites/default/files/2021-10/Report.pdf>

⁴⁴ <https://www.equalityhumanrights.com/en/managing-pregnancy-and-maternity-workplace/pregnancy-and-maternity-discrimination-research-findings>

- *I would feel comfortable as for me it would have been impossible not to. I wouldn't be able to accept a job without it. Working mum, private sector.*

It would depend on the employer attitude

Some respondents indicated that employers' attitudes are varied, so they would only feel comfortable if they knew the employer had a positive attitude and this could involve doing some research in advance or making a judgement in the interview. This highlights the need for transparency from employers to make the process of applying for jobs easier and remove barriers to applicants.

- *It is a tricky subject and often is dependent on the employer. You get a feel for who you can ask. I had a disastrous interview with a male interviewer in the NHS who's opening question was "why do you want to work part-time?" (I'd stated this on the form). He was extremely hostile to begin with. Compare this with a recent interview for a professional services firm who brought the subject up first and asked me what would suit me. Amazing! So it shows you have to judge the room, but then you shouldn't have to do that should you? Working mum, private sector.*
- *It would depend on which company I was applying to, I would assess whether or not they seemed to have a forward thinking culture and if so I would be more comfortable asking for flexible working from the offset. In other situations I may tread more carefully and only broach the subject once I knew they wanted me for the role. Working mum, private sector.*
- *I would feel comfortable but would probably research companies who I knew supported flexible working and work life balance. Working mum, charity/voluntary sector.*

Overall these responses demonstrate the flaw in a request-based system – that people don't feel confident to ask, largely because of negative treatment of flexible workers, which as we have seen from previous research is not an unfounded assumption.

Question 3: Including flexible working in a job adverts

An alternative to people having to ask for flexible working is to build transparency into recruitment processes by requiring employers to include possible flexible working arrangements in job adverts. Almost all of those who sent in consultation responses (97 per cent) indicated in their answers that it would help if the types of flexible working available in a role were included in a job advert. The common reasons for this included.

Knowing which jobs they could apply for

It would help applicants know which jobs they can apply for and which jobs are suited to their responsibilities outside of work, saving them time in the job search process. This would also be of assistance to employers. If employers assessed a role for what flexible working was possible and included it in a job advert, they would reduce time spent on reviewing applications, shortlisting and interviewing people who ultimately leave as the job is not suitable.

- *If the flexibility was described you would be able to apply for the roles that would fit you most. Or adapt what you need outside of work to fit the role you're interested in.* Working mum, self-employed.
- *It would save me wasting time applying for a job I can't do.* Working mum, public sector.
- *It would be extremely helpful - I'd immediately know which jobs not to bother applying for.* Working mum, private sector.

Responses to this question also highlighted the need for employers to provide more detail on what flexibility is available rather than generic statements. As there are so many different types of flexibility, with some suited to different types of jobs and for different people, clarity is essential.

- *Government roles do this as standard. But even I was too scared to ask for flexi at interview because although every job lists the right to request, the role itself is advertised as full time.* Working mum, public sector.
- *A lot of companies will state they have flexible working but they need to state further what flexible means to them!* Working mum, self-employed.

Reducing stigma

Respondents also highlighted that having flexible working options in job adverts removes the judgement and uncomfortableness that many people feel asking for flexible working, as highlighted in the answers to question 2. Respondents stressed that this makes the process far more transparent and fairer to those applying.

- *It just removes the awkwardness of having to ask in the first place. It would so easily be something that someone could feel judged for asking. Like I'm still nervous to ask about maternity leave policies. But this takes away that, and would make it the norm to advertise it.* Working mum, private sector.
- *This would be hugely helpful as then I would know what is available to me and I wouldn't feel presumptuous in asking. Imagine going into a supermarket and nothing being on the shelves and having to ask for every single thing you need. That would make no sense and nor does it in a working environment: employers must be made to make what they can and can't provide really clear.* Woman, charity/voluntary sector.
- *This is a game changer. Transparency from the get go means we can have a proper conversation with the hiring team and not be riddled with anxiety about when to bring it up.* Mum, unemployed/looking for work.

To understand the culture of an organisation

Respondents also stated that advertising flexibility would indicate the culture of an organisation and make them more likely to apply. Our recommendation is that all employers should be required to do this. This would help to make flexible working the normal way of working and reduce stigma for those who need to work flexibly. In the TUC's

consultation response⁴⁵, we recommend that employers should in addition be required to put in systems around the take up of flexible working and the retention and progression rates of those staff who are affected by these decisions. Such monitoring would support employers to understand the barriers workers face and deliver transparent, equal and fair access to flexible working.

The TUC believes monitoring information should be reported by all employers who are required to report gender pay gap data. The government's pay gap portal provides a widely accessible location for individuals who might want to find out more about their prospective employer. Therefore, there would still be opportunity to look at employers and make a more informed judgement on their culture. Given that it would be a requirement of employers, it would provide far more information than can be contained in a job advert giving greater clarity to candidates.

The need for regulation

Some respondents also highlighted that they had applied for jobs that had stated in the advert they were open to flexibility, to then have flexibility denied once they had started.

- *The vast majority of companies now write they offer flexibility in their adverts, but this could be so many different things, and very often it's just for show. It's exhausting having to go through application and interview phases, to then find out that actually the organisation has no intention to honour what they advertise, or they aren't able to support what the worker need. This should be clear on the job advert, not be the last conversation you have before signing the contract, because it's a waste of time for everyone.* Working mum, charity/voluntary sector.
- *...mentioning it in a job advert encouraged me apply but ultimately that's not what they wanted. So if it's included then it needs to be a serious consideration.* Disabled woman, self-employed.
- *It would but it's of no benefit if it is just lip service.* Working mum, public sector.

This demonstrates the need for an advertising duty as opposed to simply nudging employers in the right direction, to ensure that the flexibility offered is available from the first day in the job and that employers who do not comply can be held to account.

In the case of a failure of an employer to offer advertised flexibility to a successful candidate, we believe the most appropriate route to redress would be through a claim in the Employment Tribunal.

The responses from the public indicate strong support for employers including possible flexible working options in job adverts to remove the barriers that people face in recruitment process and to normalise flexible working as something that is on offer to everyone.

⁴⁵ <https://www.tuc.org.uk/research-analysis/reports/making-flexible-working-default>

Question 4: Employers reasons for rejecting flexible working requests.

The government consultation also looks at whether the eight business reasons for rejecting need to be amended. Members of the public provided their views via question four in our online tool.

Almost nine in ten (87 per cent) of those who sent consultation responses believed that employers can turn down flexible working requests too easily, with only seven per cent believing they couldn't.

The key themes that were drawn out of this question were as follows.

The business reasons are flawed

Respondents felt it was too easy for employers to reject flexible working requests as the business reasons for rejection are so broad, giving employers free rein to turn down requests. Respondents felt that the business reasons in some cases gave employers cover to reject flexible working requests that they had not thought carefully about and meant employers did not have to provide particularly detailed responses to any request.

- *The business reasons are very broad and extremely vague, meaning it is so easy to say no without giving it sufficient thought. Working mum, private sector.*
- *As a person who works in HR and therefore sits in flexible working meetings, I believe the reasons that employers can give basically cover everything and that they can say no to a request very easily. Working mum, private sector.*
- *They only have to quote 'it doesn't work for the business' and give no more info. Working mum, private sector.*
- *Because the 5 conditions they have to meet to refuse it are too open to personal interpretation as to be much use. Working mum, private sector.*
- *As a manager I have handled flexible working requests and the list of reasons we have to deny the request is far too long. Working mum, private sector.*

The TUC believes that narrowing the business criteria for rejection would mean employers had to think more carefully about what is possible and would not be able to reject requests out of hand with little thought to whether it's possible or not.

In addition to the business reasons, some respondents highlighted other aspects of the process that made it difficult to request, for example unclear processes, the length of time it took and that all the onus is placed on the individual to prove that the arrangement will work.

- *Not personally but as a retail manager I have seen numerous requests not accepted and no proper process or effort put in to link up people who could job share for instance. Working mum, private sector.*
- *There are still too many loopholes that HR can tie a member of staff up with. Woman, public sector.*

- *I've not had a request turned down, but the process was long and put solely to me to demonstrate what could be done and what impacts could be. More support/guidance should be given.* Working mum, private sector.

It would open the floodgates

Another common reason for rejection that came up in the public consultation responses was employers who stated that if they said yes, everyone would want flexible working. This indicates that employers do not see flexible working as a normal way of working, but as a perk that must be limited to a favoured few. In addition, it implies that flexibility is an inconvenience that is too difficult to manage.

- *In a previous role I asked, submitted a request for flexible working which was declined by my manager because despite having a flexible working policy, he "didn't want to set a precedent".* Working mum, public sector.
- *The one I hear all the time is, if we allow one person to have flexible working everyone will want it.* Working mum, public sector.
- *I have. It would "open the floodgates". I don't think that's a valid reason, so I left and found another job.* Disabled working mum, public sector.

The idea that flexibility is a perk is also reinforced through responses that highlighted flexibility was offered to senior staff but not to them. This also implies flexibility is something to be earned or something that is only on offer to a trusted few, rather than something that is available to all staff.

- *I was refused flexible working when I asked years ago after returning to work for first child (about 6 years ago). I was a very strong member of the team, an asset really. But I was a female PA and therefore at the bottom of the pile. The senior team all later went on to WFH (pre Covid) on a regular basis but we were still not allowed. Double standards galore.* Working mum, sector not provided.
- *In the company I work for I think it can depend on the level someone is at & the rapport they have as to how easy this is.* Working mum, sector not provided.
- *I have had a work from home request refused. The company policy seemed to be one rule for senior level managers and another for others. In other words it was an inconsistent policy and made you feel that you weren't as valued by the company.* Working mum, charity/voluntary sector.

Many would not make a request

Other respondents told us they were too fearful to even ask for flexible working, given they believed it would be rejected or experience negative treatment as a result. These results support the findings of previous research that expose flaws with the right to request system.

- *I haven't even plucked up the courage to ask. I work in an all male team - there was enough stigma around my needing to take time off for maternity!* Disabled working mum, private sector.

- *I've been too scared to ask so not even sure if the process as I would be worried that it would negatively impact my opportunities.* Working mum, public sector.

Attitudes of line managers

There was a category of responses where people shared that they had been granted their flexible working request, but they were aware that this was not the case for other people they knew or in other jobs. The idea of luck or being fortunate was often cited and many people felt decisions often dependent on the attitude of the line manager rather than a consistent policy from the employer.

- *From my experience the lack of clear guidance leaves big inconsistencies even within companies, it seems to entirely depend on your manager. I have seen flexible working requests denied out right in the same team as another mother doing 3 days a week with flexible hours.* Working mum, private sector.
- *During my maternity leave I had a brilliant manager who supported my request and helped me work out a plan for a phased return to work. But when I returned I had a new manager who made it clear he found my flexi working an inconvenience and hinted that it would not have been agreed if he had been the one to approve.* Working mum, public sector.
- *I was one of the lucky ones that actually had it offered before I asked but I'm fully aware that I'm the exception.* Working mum, sector not provided.

Some people also shared that their request had been accepted but it had to go through informal channels, again providing examples of where managers approach can be different to the employers. However, people shared that this left them with insecure arrangements that could be changed at any time.

- *I haven't had a request turned down but my employer has always kept flexi hours and days at home as an under the table arrangement, refusing to have it in writing. This makes me feel like it could change at any time.* Working mum, private sector.
- *I've never had anything turned down. Where I work it's very flexible as long as your informal about it. But the informality makes it so it's up to the manager if and how it's allowed. Which isn't ideal. As again that just makes you feel like a burden.* Working mum, private sector.
- *Not having it documented also made it harder to push back on meetings or other requests outside of my intended hours, and in hindsight their more vague and seemingly open approach to flexibility was to protect their interests and I should have pushed to have a formal flexible working agreement.* Working mum, private sector.

Negative treatment of those who can work flexibly

Others also indicated that flexible working was given but they faced stigma and negative treatment as a result of working flexibly including negative comments and workloads not being amended to reflect the new number of hours.

- *I haven't had requests turned down but, I have been ridiculed by colleagues for working "flexi-time" or being a "part-timer" because my caring responsibility has meant I've needed to leave work early, or come in late.* Working mum, private sector.
- *I was given a flexible working request but with zero support. Urgent meetings out in when I could not attend, unrealistic deadlines and the same amount of work with less hours.* Disabled woman, private sector.

The answers to these questions demonstrate a need to narrow the reasons employers can reject flexible working requests. Many respondents shared examples of requests being rejected with little explanation or those that did get flexibility were entirely dependent on the attitude of their line manager. Responses also again highlight the stigma that flexible workers face and the need to address cultures to ensure people can gain access to flexible working, are treated fairly once they do and there is a consistent approach within and between organisations.

Question 5: Length of time employers have to respond to flexible working requests

Provisions set out in the Employment Rights Act 1996 state that employers must inform employees of a decision to a flexible working requests within 3 months – or long if agreed with the employee. The government consultation included questions on whether the length of time employers have to respond should be reviewed.

Therefore, question five in our online tool asked respondents to share their views on the length of time employers have to respond to flexible working requests. In response to this question, some respondents provided the length of time they had waited and the impact this had on them, whereas others made general comments on employers' behaviour and if they believed in generally employers should act faster.

In analysing the results, we grouped answers into themes, which are displayed in table 1. The definitions for each category are included in appendix I.

	Percentage of respondents
1 month or less	37
Answer did not indicate an opinion on the length of time	23
Employer provided a quick response	14
1-3 months	8
Over 3 months	6

3 months	4
Employer was slow to respond	4
Several months	2
Currently waiting for a response	2

Table 1: Length of time respondents waited for responses to flexible working requests

As seen in Table 1, the answers overall indicate that respondents felt employers were providing responses within the statutory timeframe. Almost four in ten (37 per cent) answers to this question stated the person had received a response within one month of asking. However, a significant minority of one in ten (10 per cent) were waiting the full three months or longer for a response and this included those who never received a response from their employer.

It is worth noting however that when looking at the answers, respondents have reported on a mixture of formal (contractual) and informal requests and times when they have asked when already in post or during a recruitment process.

Although the answers do suggest that many employers are able to provide answers within one month, which supports TUC recommendation that employers should be required to set up a meeting to discuss the request within 2 weeks of receiving a response, and then provide an answer within 2 weeks of that meeting.

Positive themes

The following positive themes were evident in the responses.

Positive impact on work and life

Those who did receive a quick response spoke of the positives of feeling valued, supported and being able to get on with their job and life.

- *Once I did ask, I received a swift response (within a day) and it was very positive and supportive. I felt immensely relieved.* Disabled working mum, private sector.
- *When I asked for flexible working it was approved within a week. This made life so much easier for me, because it meant I could plan for childcare accordingly and quickly. Not only that, but the speed and willingness of my employer to accept my flexible working request has made me want to stay with the company, work hard and build a career there.* Working mum, private sector.

Good and clear communication

Respondents also praised employers for good and clear communication throughout the request process.

- *The companies policy meant I had to wait 4 weeks for a formal response, but my line manager kept me up to date on progress that it was agreed by the time I returned from mat leave.* Working mum, private sector.

- *She explained the process in initial meetings and then set out a timeline for what needed to happen by when. In teaching the application had to go to the half termly governor’s meeting, so I had to wait three weeks to hear a definite answer. Working mum, public sector.*

Flexibility is part of workplace policies

Some respondents indicated that the reason they received a quick response or that they didn’t need to ask in the first place was because flexible working, and in particular the type of flexible working available, was built into their workplace policies and the culture of the organisation.

- *Less than a day! This is how it should and can be done. It is already a company policy so they got back to me relatively quickly with what my options were (either reduced hours or condensed hours, emphasis on work completed over the time spent doing visibly doing it) and let me choose what to do....It made the end of my maternity leave stress free so I could enjoy my new baby. Working mum, charity/voluntary sector.*
- *Because we had flexitime and a flexible policy in place, I didn’t really have to wait.... I also know from day one returning I could log off early to pick kids up if needed. Drop everything at once if they were sick etc and someone would cover me. Working mum, private sector.*
- *Most teams I have worked in have had flexible working for all staff within core hours (10-4), as well as occasional work from home days on request, which has been hugely helpful for me not having to ask for special treatment. Disabled woman, public sector.*

The quotes highlight that having flexibility up front and in workplace policies meant they did not have to request flexibility every time they need it, easing the process for them but also reducing the number of requests that employers have to deal with. If employers have already reviewed jobs for what flexibility is possible and offered this to workers, there is less need to request flexible working as it is already clearly communicated what is available.

Negative themes

The respondents also highlighted negative experiences and the impact that waiting for a response can have.

Immediate rejection

The speed of response was not always viewed as a positive. Some respondents felt that employers simply had not considered the request properly.

- *I didn’t wait long for it to be dismissed out of hand. Disabled parent, unemployed/looking for work.*
- *I didn’t wait, I was turned down immediately. It was terribly stressful and knocked my confidence. Working mum, self-employed.*

- *Zero minutes, it was refused out of hand as the company did not have any flexible working policies to follow, and my need was considered trivial rather than no option.* Disabled man and carer, private sector.

Stress and financial impact of having to wait

Respondents described the impact that having to wait had on them. The impacts included negative impacts to their mental health, financial impacts and respondents indicated the problems that having to wait can cause when trying to arrange childcare.

It is important to note that these impacts were described by those who waited less than a month as well as those who waited longer. Given that circumstances in life can change so quickly, having to wait even a week can have detrimental impacts on those who need the flexibility. Alongside fast response times must also be proper consideration of a request, clear and transparent processes and good communication.

Mental health

- *I applied in May and the trial of my flexible working started in October. The delay was difficult as I applied for flexible working for my mental health.* Working mum, private sector.
- *12 weeks. It was awful. I was riddled with anxiety. My manager was awful to me and made so many awful comments.* Working mum, private sector.

Financial impacts

- *My employer waited the maximum allowed time according to our policy. As it then went to appeal, I had to extend my maternity leave as I couldn't arrange childcare until I knew what my working pattern would be.* Working mum, public sector.
- *3 weeks. I had to take annual leave and unpaid leave, meaning it used up holiday I was able to take for the rest of the year and was also impacted financially. This added further stress and anxiety, which was ironic as I was asking for flexible leave to allow me to attend counselling sessions one afternoon a week.* Mum, unemployed/not looking for work

Impacts on childcare

- *3 months and the stress was horrendous, given you have to book a child care space about 10 months in advance and you cannot put an application [flexible working request] in until you are due to return to work.* Working mum, private sector.
- *2 months. Very stressful. I didn't have adequate childcare in place and being a single parent all the uncertainty was unsettling.* Working mum, private sector.
- *I had to wait about 3 months for a definite answer, which meant I had to pay for a childminder while I waited which was expensive and a stressful period.* Working mum, public sector.

Job losses

Again, job losses came up as a theme in this question.

- *They made me wait 12 days after my request and then told me they were letting me go.* Working mum, private sector.
- *When I asked for flexible working, I only waited a day or so before being told they would give it a try, however I was subsequently let go during my probation period.* Working mum, private sector.

Poor processes and communication

Negative themes that also came up were poor communication and processes by the employer,

- *Lack of communication is the worst, length of time can be okay if I know why and when they will get back to me. Being in limbo with no answers, and no idea when it might come is much worse and often what I've had.* Working mum, private sector.
- *I have still never had it in writing unfortunately. Given verbally although I did press for it written I've not had that. I was also not told there was a review period. It was told to HR only.* Working mum, private sector.
- *I did not get a formal response and it was only confirmed when the new electronic diaries were made with my new flexible working hours.* Woman, public sector.
- *It was a stressful eight weeks not knowing what was happening. In the end the request was denied 'due to operational reasons.' No further comments were offered.* Working dad, private sector.

The number of requests per year

The question asked for views on the length of time that employers had to respond to questions and in answers some respondents raised the fact that under legislation employees can only make one flexible working request per year and emphasised the inconvenience of this given that circumstances change and if rejected means you have to wait a whole year.

- *I also don't understand why you can only make one request a year - situations change!* Working mum, charity/voluntary sector.
- *The amount of time I wanted with my employer was ok, however I do not think that there should be a limit on the number of requests as circumstances can change.* Working mum, public sector.
- *I've asked every year as allowed by policy. I've had to chase responses every time. All have been refused (6 years).* Working mum, public sector.

Policy statements

We also asked people who completed the consultation to state whether they agreed with the TUC policy asks and if they would include these in their consultation response. Unfortunately, due to an error with the online tool, these policy asks only appeared on the 15 November, meaning those who provided consultation responses prior to this date were unable to include them. Table 2 shows the percentage of people who included the statements in their responses after the error was rectified. A total of 4,117 people were able to provide these statements in their response should they have wished to.

Statement	Percentage of people who agreed and included in their consultation response
Employers should have to include the possible flexible working options in all job adverts, with employees having the right to take these up from their first day in the job.	98
There should be far fewer permitted reasons why employers are legally allowed to turn down flexible working requests.	96
Employers should have to respond to flexible working requests more quickly, and there should be no limits on the number of times employees can request flexible working.	96

Table 2 Statements included in consultation responses. Based on 4117 responses

The impact of Covid-19.

There was not a specific question in the government consultation on the impact of Covid-19 on working arrangements, but it is a theme that came up frequently in respondents' answers. Respondents noted that Covid-19 had proved that flexibility can work in their role, but their views on what will happen in the future was mixed. Some responses indicate Covid-19 had demonstrated to their employer the benefits of flexibility and had opened up opportunities to work differently.

- *Flexible working has only really been introduced since Covid as they are now aware that we can effectively work from home etc. Working mum, public sector.*
- *What covid has done is to make it acceptable to pop to collect children from school or ok if children appear in background on a call. Before covid it felt like you had to keep that side hidden. Working mum, private sector.*
- *I asked for flexible working on return from maternity leave and due to everyone else WFH I was granted me request. I don't think this would have happened so easily pre covid. Working mum, private sector.*

However, some respondents indicated that Covid-19 had not made their employers more open to flexible working and in some cases had resulted in flexibility becoming more difficult.

- *I have worked from home throughout the pandemic with no negative impact to my work; however now I am being forced back into an unsafe environment which has made me anxious about the safety of my unborn baby.* Pregnant working woman, sector not provided.
- *I had to fight with my employer to be able to shield in the third trimester of my pregnancy due to COVID so I would not feel comfortable asking for flexible working.* Working mum, private sector.
- *My company has always been very flexible. In fact, now that the pandemic is "over", they put more formal restrictions in place. E.g. 50% of your week you have to be in the office.* Working mum, private sector.
- *It has been repeatedly brought it up at staff meetings over the years but nothing has changed. If anything covid has made it more difficult.* Working mum, public sector.

This varied picture is supported by research which suggests we cannot rely on the pandemic to have changed approaches to flexible working. The number of jobs advertised as remote dropped by 24 per cent between June and August of this year⁴⁶. CIPD research also shows a drop in all forms of flexible working (other than homeworking) since the onset of the Covid-19 pandemic⁴⁷.

Recommendations

The public responses to the consultation have demonstrated that flexible working is not a nice to have for a favoured few, but essential for people to be able to work. Members of the

⁴⁶ <https://www.peoplemanagement.co.uk/news/articles/vacancies-remote-roles-fall-peak-companies-return-offices-figures-show#gref>

⁴⁷ <https://www.cipd.co.uk/knowledge/fundamentals/relations/flexible-working/flexible-working-impact-covid>

public told stories of how a lack of access to flexible working has far reaching and damaging impacts including financial impacts from having to cut hours, take unpaid leave or leave work altogether and impacts to health.

The public have clearly indicated in their responses that the system is broken. As a result of the stigma that surrounds flexible working, people do not feel comfortable asking and if they do, employers can turn down requests far too easily with no requirement for them to consider requests properly. The public also told of the stress that having to wait for flexible working can cause but also provided examples of where employers are getting this right – when requests are dealt with in a transparent and swift manner.

The public responses show us that flexible working is too important for the government to get this wrong. Yet the consultation indicates the government are set to continue with a request-based model that is flawed and will not make flexible working the default – their intended aim.

We urge the government to listen to working people, and ensure every worker has access to flexible working by introducing the following measures. These consultation responses also show support of these measures.

An advertising duty

The government should create a duty on employers to publish the flexible working options that are possible in a role in job adverts and give workers the right to take up the advertised flexibility from day one. If employers feel that a role cannot accommodate any form of flexibility, they should be required to transparently set out the reasons that justify this.

The practical and legal steps to this policy should be as follows:

- 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.
- If an employer considers that no flexible working arrangements are appropriate for the new role, they should set out that no form of flexible working is suitable in the job advert and why.
- All roles should be deemed suitable for flexible working unless it can be shown that the unavailability of flexible working is a proportionate means of achieving a legitimate aim. Flexible working legislation would reflect objective justification as set out in the Equality Act 2010.
- The new postholder would have a day one right to take up the flexible working arrangements that have been advertised.
- Where there is a union, the review of what flexible working options in each job role should be done with union representatives and in line with collective bargaining structures.

Previous research by the TUC⁴⁸ shows that this would be relatively easy for employers to implement, and we believe that the duty to publish specific flexible working options in an advert would also not be complicated to enforce. We propose that responsibility for enforcement sit with the EHRC and would envisage the enforcement approach reflecting that taken by the Commission in relation to preemployment health questionnaires or discriminatory advertisements. In the EHRC's own response to the consultation, they stated that it is important employers explicitly advertise roles as flexible and welcome an opportunity to discuss their role in enforcement⁴⁹.

To ensure individuals are aware of their rights, changes to legislation should be accompanied by a public messaging campaign, so individuals would have a better understanding of when to report advertisements.

In the case of a failure of an employer to offer advertised flexibility to a successful candidate, the most appropriate route to redress would be through a claim in the Employment Tribunal.

We also believe the remedies outlined as part of the Employment Rights Act for flexible working fall short. Employment tribunals in claims regarding flexible working should be able to make recommendations to employers and the amount of compensation awarded should be increased. The process for flexible working requests outlined in this response should form part of an ACAS statutory code of practice.

A right to flexible working

The right to ask, is merely the right to be rejected. Therefore, the government must ensure flexible working is a genuine legal right from the first day in a job.

We believe the most effective way to achieve this is for flexible working legislation to reflect the objective justification as set out in the Equality Act 2010. Workers should be able to request flexible working on the first day of the job and requests could only be rejected if such a rejection was a proportionate means of achieving a legitimate aim. Therefore, instead of the current list of business reasons, section 80G of the Employment Rights Act would state 'shall only refuse the application where refusal is a proportionate means of achieving a legitimate aim'. Workers should also be able to make a complaint to an Employment Tribunal if the decision by their employer to reject a request was not a proportionate means of achieving a legitimate aim.

Employers should be required to provide a response within four weeks of receiving a flexible working request. All workers, not only employees, should be able to make flexible working requests and workers should have a right to appeal and no restrictions on the number of flexible working requests made.

⁴⁸ <https://www.tuc.org.uk/news/tuc-poll-seven-10-hr-managers-support-greater-flexible-working-their-workplace>

⁴⁹ <https://www.equalityhumanrights.com/en/legal-responses/consultation-responses>

For the TUC's detailed recommendations for changes to legislation, please see our response to the BEIS consultation on making flexible working the default⁵⁰.

A right to disconnect

The government must also take steps to ensure that flexible workers do not experience negative impacts on their health and wellbeing through excessive working hours by introducing a statutory right for employees and workers to disconnect from their work so as to create "communication free" time in their lives.

Methodology

The TUC ran an online tool so that members of the public could submit a response to the BEIS consultation between 10 November and 1 December 2021. There were 5,890 responses, but we have analysed 5,744 which is those that were submitted within the consultation deadline and duplicates have been removed.

Of the 5,744 respondents, nine in ten (93 per cent) were women and five per cent were men. Gender was established using information in responses, for example if they stated that they were a mum and name. We acknowledge that this is not a robust methodology for collecting gender as it is not self-reported, however, it was felt that additional demographic questions (for example gender, race) should not be added as these were not asked for in the government consultation.

However, we believed including gender was important to indicate the experiences of men and women and it identifies that the majority of responses were likely received by women. Based on information in the responses we were unable to assume a gender for two per cent of respondents.

82 per cent of respondents were employed, six per cent were self-employed, two per cent were unemployed/not looking for work and one per cent were retired.

46 per cent stated they worked in the private sector, 31 per cent in the public sector, eight per cent in the charity/voluntary sector and seven per cent selected other.

We did not collect any more demographic data on those sending responses – these were the questions included in the BEIS consultation.

As the majority of the consultation responses were qualitative, to analyse the results we coded answers to establish common themes and to gain percentage figures we grouped answers into categories.

⁵⁰ <https://www.tuc.org.uk/research-analysis/reports/making-flexible-working-default#:~:text=To%20truly%20make%20flexible%20working,propose%20that%20the%20government%20introduce%3A&text=If%20an%20employer%20does%20not,the%20job%20advert%20and%20why.>

Appendix I: Definitions for question five

The following definitions were used to categorise answers to question five.

- 1 month or less – answers which indicated the respondents had waited one month or less for a response to their flexible working request.
- Employer provided a quick response – answers which indicated that respondents felt they had received a quick or timely response to their flexible working request, without providing a numerical value.
- 1-3 months – answers which indicated the respondents had waited over one month but less than 3 months for a response to their flexible working request. This includes those who stated they had waited several weeks, without assigning a numerical value.
- 3 months – answers which indicated the respondents had waited 3 months for a response to their flexible working request.
- Over 3 months – answers which indicated the respondents had waited over 3 months for a response to their flexible working request.
- Several months – answers which included general references to waiting many months for a response to their flexible working request.
- Employer was slow to respond - answers which indicated that respondents felt employers were slow to respond or needed to be faster in responding to their flexible working request, without provided a numerical value.
- Currently waiting for a response – answers which indicated that respondents were still waiting for a response to their flexible working request and it had not already exceed the 3 month period.
- Answer did not indicate an opinion on the length of time – answers where respondents did not provide an opinion of the length of time employers have to respond to flexible working requests.