

# **Union reps' experiences of flexible working and parental leave**

**A TUC report**

## Summary

To supplement the TUC Equality Audit 2020 on collective bargaining, the TUC commissioned Labour Research Department to conduct two surveys of union reps in June and July 2021. One on equality in the workplace and one on flexible working and parental leave during the pandemic. This report captures the findings from the flexible working survey.

Flexible working is a longstanding issue for union reps and has become an especially prominent issue during the pandemic due to government guidance to work from home where possible, which ended on 19 July 2021.

The survey was open for 2 weeks in mid-July 2021 and was completed by 1,712 union activists. The survey aimed to find out about collective agreements on flexible working and how the pandemic has impacted on access to flexible working.

The survey confirmed what we suspected, that flexible work has been an area of change during the pandemic. Three-in-five (59 per cent) respondents confirmed they had a collective agreement on flexible working. The vast majority of these had been negotiated before the pandemic (95 per cent) but half of reps with a collective agreement said it had been changed during the pandemic.

There are positive signs that unions are negotiating agreements that provide much better flexible working arrangements than in law. The current law gives a right to request flexible working but not the absolute right to do it. The survey found that at least half of the workplace agreements gave the absolute right to at least some staff to take up staggered hours, compressed hours, job-shares, working from home, mutually agreed-predictable hours, phased retirement, part time working and flexitime.

Just under half of reps (48 per cent) with a collective agreement on flexible working said their agreement requires the employer to advertise at least some jobs as open to flexible working.

Through the survey we wanted to find out if getting access to flexible working had become easier or harder during the pandemic. Perhaps unsurprisingly, given the requirement to work from home where possible during much of the pandemic period, more than three quarters (77 per cent) said getting access to or maintaining homeworking arrangements has got easier during the pandemic. But access to other forms of flexible working had not changed much during the pandemic, and some reps reported it had got harder (19 per cent reported it had got harder to access flexitime).

There were a number of industries where reps said access to flexible working has become more difficult during the pandemic. These were the communications and construction industries and particularly the passenger transport and retail and distribution industries.

Across all forms of flexible working, apart from working from home, more reps thought access will get harder after the pandemic than it has been during, with majorities anticipating that it will not change. Even in relation to working from home, whilst 44 per

cent of reps thought this would be easier to access after the pandemic, 33 per cent expect it to get harder.

Again, there were sector differences within this. Industries where reps were less optimistic than average about future access to flexible working were communications, construction, manufacturing, passenger transport and retail and distribution.

Flexible working is clearly an important area of activity for union reps. In our 2020 'Equality in the Workplace' survey, flexible working/work-life balance was the most common equality/inequality topic that reps dealt with and had become more prominent as an issue since 2016. However, 21 per cent of all reps in the survey had dealt with issues relating to flexible working but felt there was insufficient guidance on it. Reps cited this area as where there is the biggest gap on guidance.

We need to build on the guidance and support offered to ensure union reps are supported in this area and learn from those unions that are successfully negotiating for support that goes well above the law.

## Introduction

Flexible working has been a longstanding issue for union reps and became an especially prominent workplace equality issue during the Covid-19 pandemic. To supplement the 2020 TUC Equality Audit, the LRD carried out a survey of workplace union reps to capture their experience of the topic during this unusual period – both in terms of collective agreements and actual practice in the workplace.

The survey was conducted in mid-July 2021 and was completed by 1,712 union activists who had held a union post in their workplace at some point in the past four years. The large number of reps responding within a period of just over two weeks would suggest that this has been an important workplace issue.

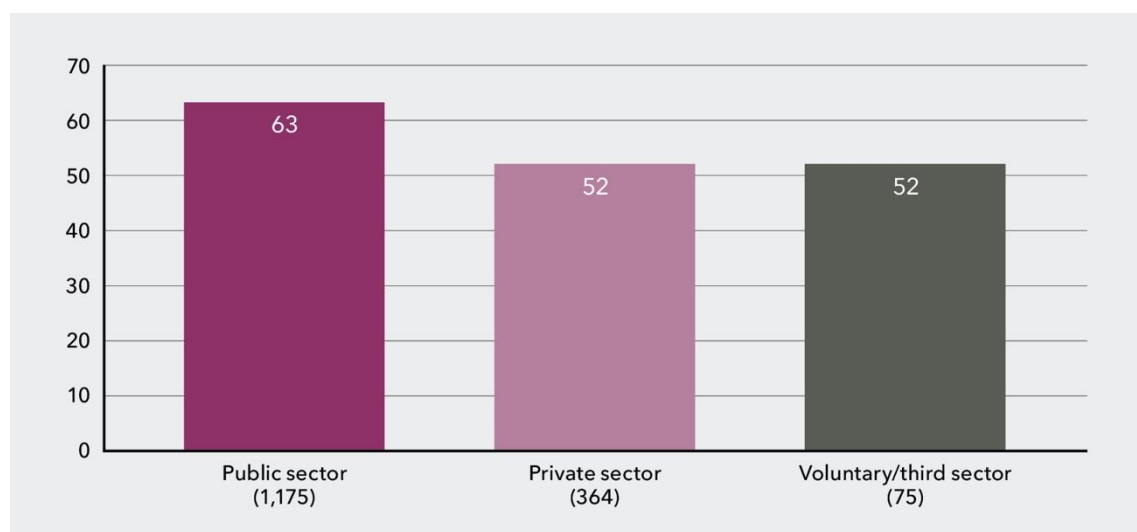
The respondents came from 39 different unions (including three from outside the TUC). 69 per cent came from an employer in the public sector, 22 per cent in the private sector and four per cent from the voluntary or third sector.

## Flexible working collective agreements

Three-in-five respondents (1,009 or 59 per cent) said there was an agreement on flexible working covering their workplace that their union was involved in negotiating. The agreement may have been negotiated locally or nationally. The rest were split roughly evenly between those who said there was not an agreement and those who did not know.

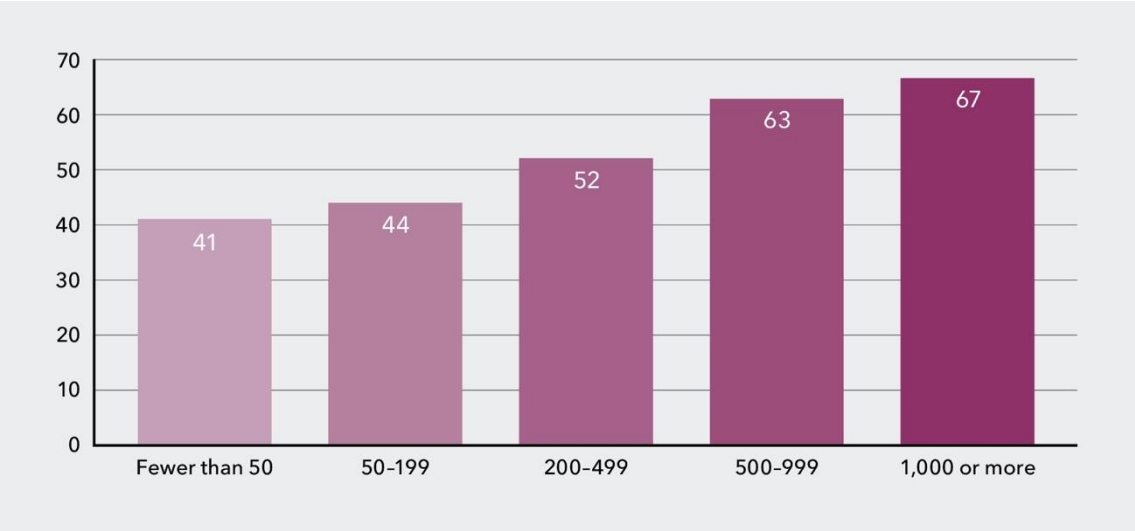
Agreements are more widespread in the public sector than the private and voluntary/third sectors and more common the larger the workplace (see charts 1 and 2).

**Chart 1: Percentage of workplaces with flexible working collective agreements, by sector**



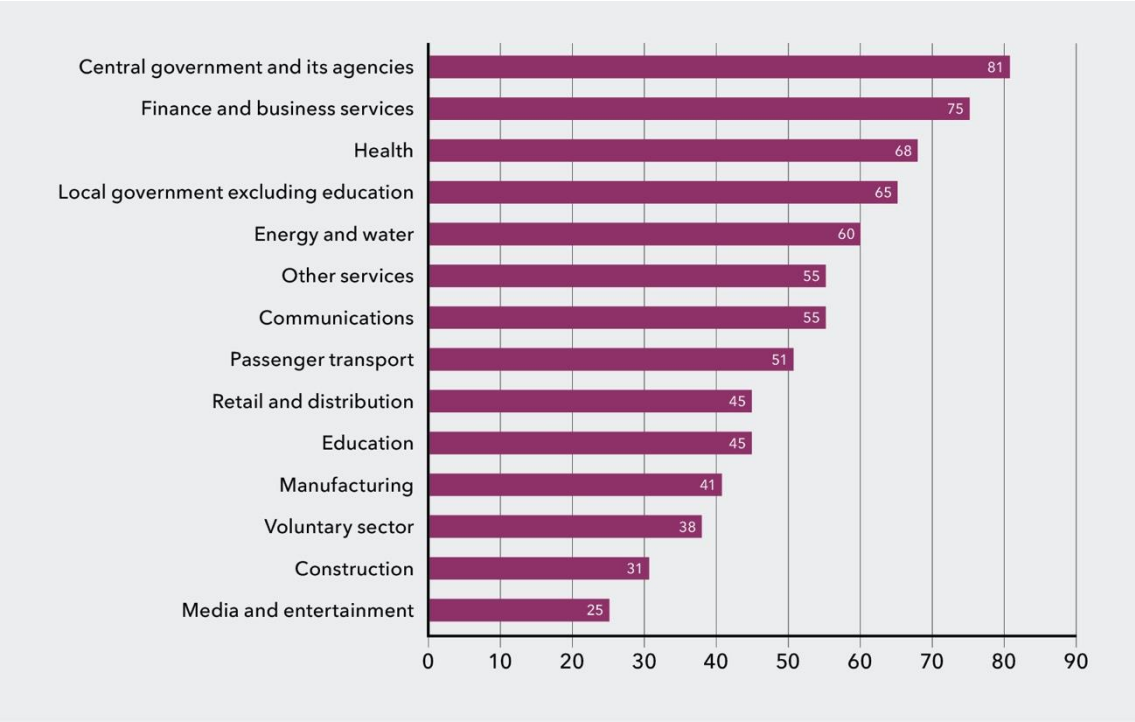
Figures in brackets are base for each sector answering question. In addition 81 respondents described sector as 'other/don't know'.

**Chart 2: Percentage of workplaces with flexible working collective agreements, by number employed**



Looking at different industries, central government has the highest density of flexible working collective agreements, followed by finance and business services, health and local government (excluding education) (see chart 3).

**Chart 3: Percentage of workplaces with flexible working collective agreements, by industry**



Among the reps who said there was a union agreement at their workplace, the vast majority (95 per cent) said it had been in place before the Covid-19 pandemic, with only five per cent of reps saying it had been first negotiated during the pandemic.

Half (47 per cent) of reps who did have a pre-existing agreement said it had been changed during the pandemic. Of this group, three quarters (74 per cent) said their agreement had changed for the better and 8 per cent said it had got worse (with 19 per cent saying it was neither better nor worse).

Two thirds (67 per cent) of all the agreements that were in place – whether changed or unchanged by Covid-19 – were expected to stay in place after the pandemic. Only four per cent were there for the duration of the pandemic only, with a decision yet to be made in 29 per cent of cases.

Of the (703) respondents who said either there was no flexible working collective agreement or that they did not know of one, 37 per cent (257) said their union had spoken with management about introducing one, albeit that an agreement had not been reached by the time of the survey.

## **What flexible working collective agreements say**

### **Going above the legal minimum**

The law gives employees with 26 weeks' service the right to request flexible working, though not an absolute right to do it. However, some unions have improved on this minimum statutory position in a number of ways.

One way is to reduce the service requirement for making requests.

One-in-five reps (206, 20 per cent) said their agreement extends the right to request flexible working to staff who have worked there for fewer than 26 weeks, while 28 per cent said it does not (with over half not knowing whether it does or does not).

Of those agreements improving on the 26 weeks' service requirement, the vast majority have the right to request from day one of employment – although sometimes only for staff in certain roles. A number of others give staff the right to request once their probation period is completed.

Another way in which some agreements go beyond the statutory minimum is by extending the right to request to some staff who are not directly employed, such as agency staff or contract workers. Thirteen per cent (132) of reps said this was the case in their agreement, including one-in-five (21 per cent) of reps in central government.

### ***Absolute right to work flexibly***

Perhaps the most important way in which collective agreements can improve upon the legal minimum is by giving staff the absolute right to work flexibly, rather than to merely request it. The survey showed that some agreements have indeed achieved this – either for some or all staff.

Chart 4 shows the extent to which reps said their collective agreement goes beyond the minimum rights by giving some or all staff the absolute right to a range of forms of flexible working.

It shows that, for eight of the nine forms of flexible working presented, at least half of agreements give the absolute right to at least some staff to work in that way.

**Chart 4: Percentage of agreements giving absolute right to forms of working to some or all staff**



The most likely form of flexible working available as a right to at least some staff is flexitime, present in almost two thirds of collective agreements (65 per cent). However, in only half of those agreements is it a right for all staff.

The most common form available as a right for all staff is part-time working . This is the case in two-in-five (41 per cent) agreements, with another one-in-five (20 per cent) giving some staff the right to work part time.

Interestingly, the right to work from home is available to at least some staff in a majority (57 per cent) of agreements, but with only a small proportion of reps (16 per cent) saying it is a right for all staff.

Rather shockingly, only 56 per cent of agreements give the right to mutually-agreed, predictable hours to any staff, and less than half of those give the right to all staff. However, it is possible that this low number is because this type of arrangement is not overtly set out in collective agreements.

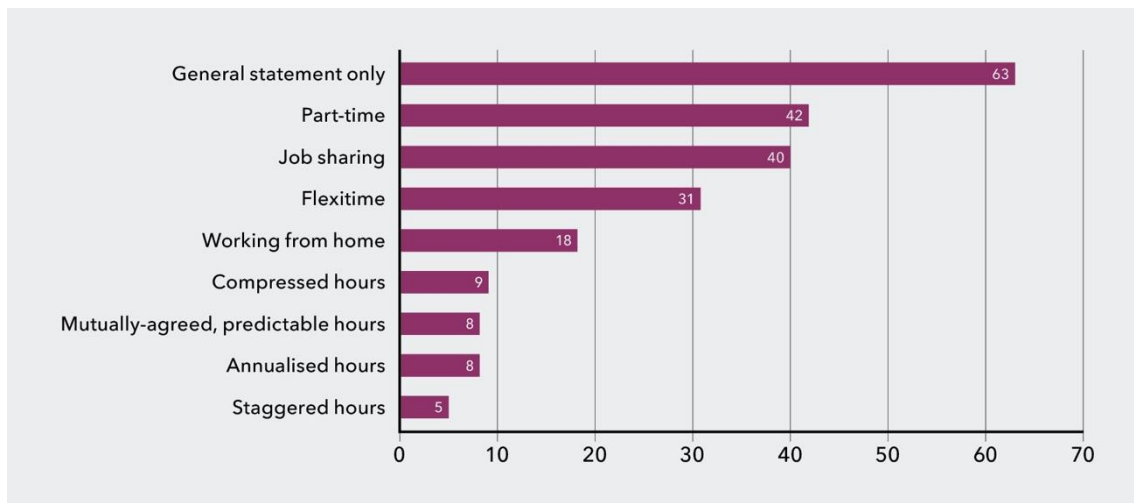
Not surprisingly, the right to work flexibly – and for what proportion of staff – varies across different forms of flexible working and across different industries. For example, in central government, two thirds (66 per cent) of agreements give all staff the absolute right to work flexitime, while this only applies to 14 per cent of agreements in the communications industry. The breakdown for all types of flexible working in all industries is shown in charts in the Appendix to this report.

## Advertising flexible working

Just under half of reps (48 per cent) with a collective agreement on flexible working said their agreement requires the employer to advertise at least some jobs as open to flexible working. One-in-five (21 per cent) said this was the case for all jobs and 27 per cent said it was for some jobs. (22 per cent said it was not a requirement and 30 per cent did not know.)

The most likely version of this requirement is to include a general statement about flexible working being available (see Chart 5). However, around four-in-ten (42 per cent) specify that part-time working is available and a similar proportion specify that job sharing is available (40 per cent). Almost one-in-five (18 per cent) specify that working from home is available.

**Chart 5: Percentage of agreements requiring employers to include flexible working in job adverts, by type of arrangement**



## Union campaigns on flexible working

Reps in the survey were asked if the union had run a workplace campaign in the last four years to press employers to be more open to flexible working, irrespective of the Covid-19 pandemic.

Around one-in-seven (14 per cent) had done so, with little difference between those who did and did not have a collective agreement on flexible working.

## The impact of Covid-19 on flexible working

### Access to flexible working during the Covid-19 pandemic

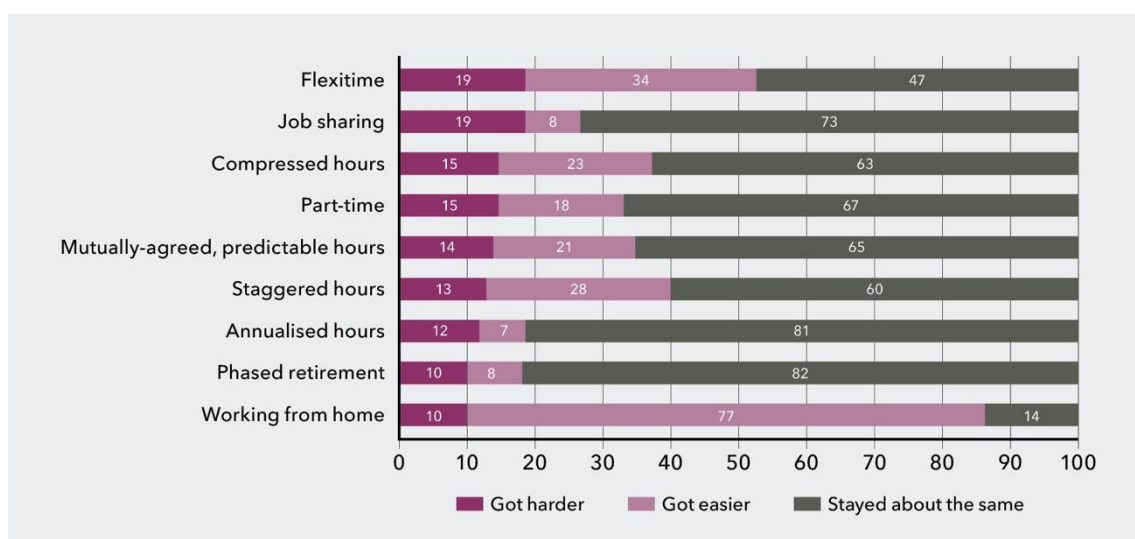
In March 2020, the UK Government and devolved administrations introduced legislation and accompanying guidance to impose lockdowns in response to the Covid-19 pandemic. People were prohibited from going to work unless they were unable to work from home. These rules were relaxed over the summer, but strict national lockdowns were re-introduced in December 2020. On 19 July 2021 the requirement to work from home where possible was lifted.

This was reflected in the survey, in which 93 per cent of reps (1,582) said at least some workers at their workplace have had periods of working from home during the Covid-19 pandemic as a result of government guidance.

And more than three quarters (77 per cent) said getting access to or maintaining homeworking arrangements has got easier during the pandemic, although one-in-ten (10 per cent) actually said it has got harder. Those in the public sector were slightly more likely than those in the private sector to say it has got easier (80 per cent compared with 65 per cent), while those in the voluntary /third sector were most likely to say it has been easier (87 per cent).

However, the same big improvements were not seen for access to all types of flexible working. Chart 6 shows the percentage of survey respondents saying access to various forms of flexible working at their workplace had got easier or harder during the Covid-19 pandemic.

**Chart 6: Percentage reps saying ease of access to flexible work forms has changed during the pandemic**



Apart from working from home, access to other forms of flexible working has not changed for the majority of workplaces and has only eased for a minority. Only one third (34 per cent) said it has been easier to access flexitime, with one-in-five (19 per cent) saying it

has actually got harder. One-in-five (19 per cent) also said access to job sharing has got harder.

One might have thought staggered hours, which could be a way of reducing peak-time commuting, would have been easier to access during Covid-19, though only 28 per cent said this has been the case in their workplace.

Reps from the private sector were rather more likely than those in the public sector to say access to job sharing, part time working and flexitime has got harder during Covid-19. Reps in the voluntary/third sector were more likely than the others to say access to flexible working had been easier.

While access to flexible working has got easier for workers in some industries, this is certainly not universally true. There were some marked divides in ease of access to flexible working between industries.

The industries where reps were most likely to say access to flexible working has got more difficult during the pandemic than beforehand were the communications and construction industries and particularly the passenger transport and retail and distribution industries. These have fared substantially worse than average in terms of access to job-sharing (except construction), working from home, part time working, compressed hours, annualised hours, staggered hours and phased retirement (except retail and distribution).

Passenger transport and retail and distribution reps were also more likely than others to say access to flexitime and to mutually-agreed, predictable hours has got harder.

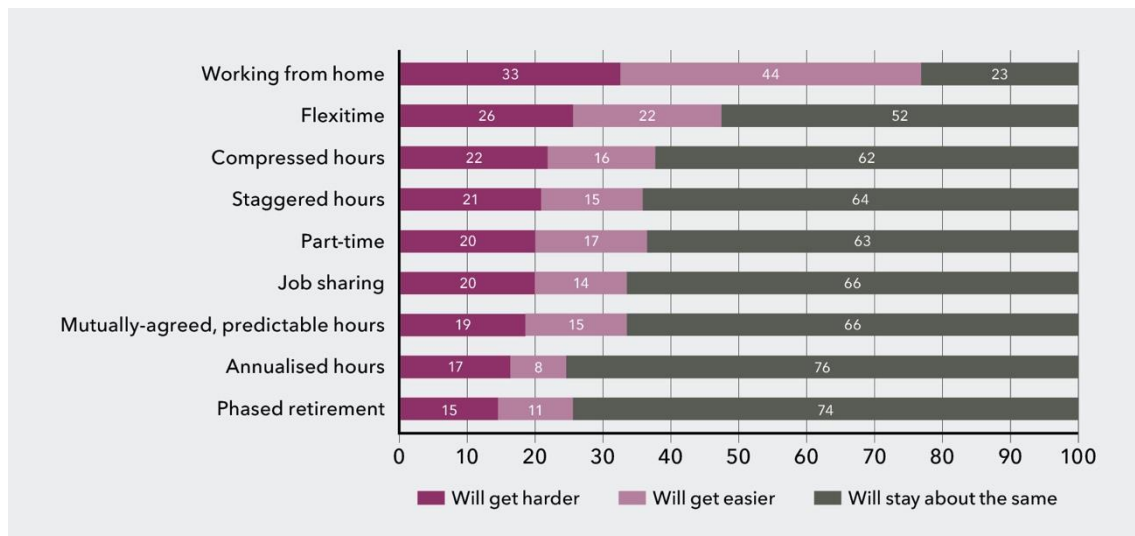
Reps from the health sector were more likely than average to say access to mutually-agreed, predictable hours and phased retirement have got more difficult during the pandemic.

## **Access to flexible working post-pandemic**

The survey also asked questions about access to flexible working in the future. Chart 7 shows reps' expectations of how access to flexible working will change following the pandemic. Across all forms of flexible working, apart from working from home, more reps thought access will get harder afterwards than it has been during, with majorities anticipating that it will not change.

Even for working from home, while 44 per cent think working from home will be easier to access, one-in-three (33 per cent) expect it to get harder. This suggests that some employers may only have been quite so open to this type of working when it was effectively forced on them by government guidance. Even among the reps in workplaces where some staff had worked from home during the pandemic, one-in-three anticipate access will get harder after the pandemic.

**Chart 7: Percentage reps anticipating that ease of access to flexible work forms will changed after the pandemic**



Reps in the public sector were more likely than those in the private sector to think access to working from home will get easier (47 per cent saying so compared with 33 per cent). And a substantial majority of those in the voluntary/third sector (63 per cent) felt it will be easier to access working from home.

Private sector reps were more likely than those in the public and voluntary sectors to think it will get harder to access most forms of flexible working, but particularly job sharing, flexitime and staggered hours.

Industries where reps were less optimistic than average about access to flexible working after Covid-19 were communications, construction, manufacturing, passenger transport and retail and distribution. On the other hand industries where reps were more optimistic than average about future access to were finance and business, the voluntary sector and media and entertainment. Also those in health and local government thought access to working from home would get easier.

## Parental leave and pay agreements during Covid-19

The survey also investigated whether the pandemic had led employers to adjust agreements on parental leave and pay during the Covid-19 pandemic – either to benefit staff or to their detriment.

First, reps were asked if their employer had been willing to make adjustments as necessary to help parents and parents-to-be deal with the exceptional issues facing them during the pandemic.

Around three quarters of respondents said adjustments had not been needed. But in the substantial minority of cases where they had, reps were split fairly evenly between those saying their employers had been willing to make them and those saying they had not been willing (see table 1).

**Table 1: Percentage where employer did/did not adjust parental leave/pay agreements to benefit staff**

	Made adjustments	Not willing to make adjustments	Adjustments not needed
Maternity leave/pay	15	12	73
Paternity leave/pay	13	13	74
Adoption leave/pay	9	11	79
Shared parental leave/pay	13	12	74
Parental leave/pay	17	14	69

A small proportion of respondents (six per cent overall) said their employer had attempted to breach agreements on one or more types of parental leave and pay to the detriment of workers. The areas most likely to be negatively affected were maternity leave and pay and parental leave and pay (see table 2).

**Table 2: Percentage where employer breached parental leave/pay agreements to staff's detriment**

Maternity leave/pay	2
Paternity leave/pay	0.5
Adoption leave/pay	0.1
Shared parental leave/pay	0.8
Parental leave/pay	2

Some respondents noted that, to comply with government advice to pregnant workers to take maternity leave at 28 weeks, new mothers had had less time with their new-born babies as maternity leave and pay had not been extended accordingly. In one case the company had refused to allow a pregnant worker to start her maternity leave at 28 weeks.

The most commonly mentioned issue in this area, however, was how employers had responded to staff who had to stay at home with children in periods of schools and childcare facilities being shut, or when their children have been self-isolating from school. There were both positive and negative employer reactions to this.

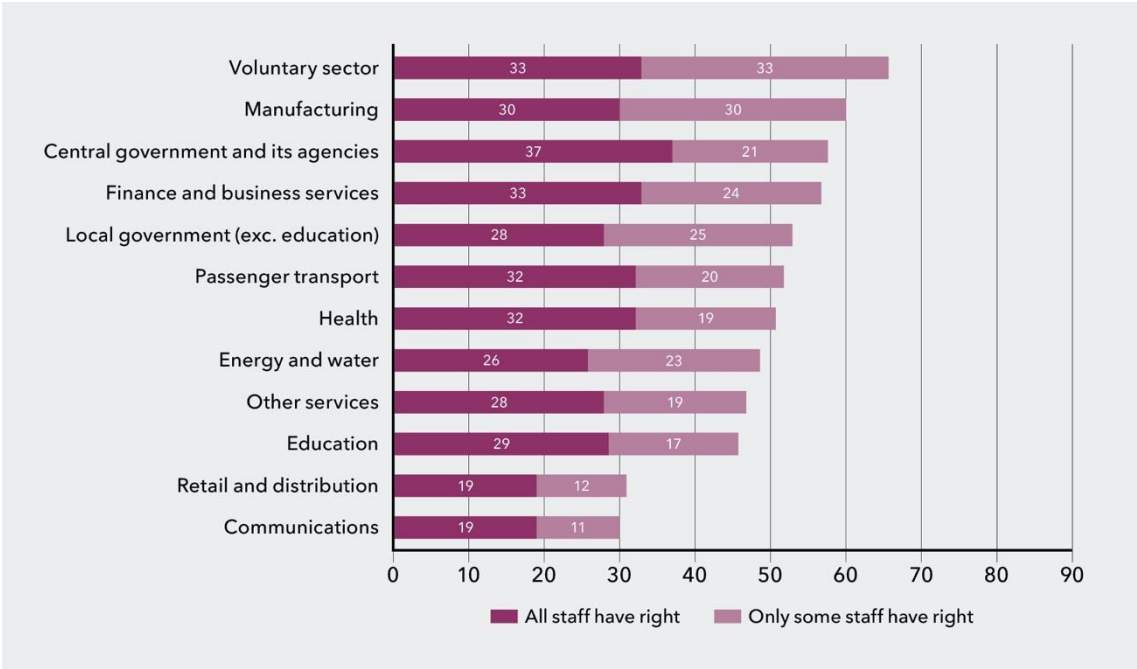
Some employers forced people to work in any case, or use their annual leave or take unpaid leave. A PCS rep at, ironically, the Department for Education, spoke of "Abuses of existing parental leave rights during periods of school closures where staff were told they must demand their right to a place in school for their child. Where staff would/could not do this they were told to take unpaid parental leave." A Unite rep at Cornwall airport said there had been "No flexibility; [a] female fire fighter had no choice in leaving because of employers lack of empathy towards child care."

But there were also comments about positive responses by employers in these circumstances. These included being more flexible about leave arrangements and working hours, allowing people to work from home, reducing hours without reducing pay, adding extra paid special leave and giving flexi "credits" so that people on flexitime who were forced to stay at home did not have to make up the time. One of the best examples was at an energy company which provided 10 days' extra paid dependency leave for such parents, which could be used in days or hours when children were sent home.

## Appendix: Absolute right to work flexibly in different industries

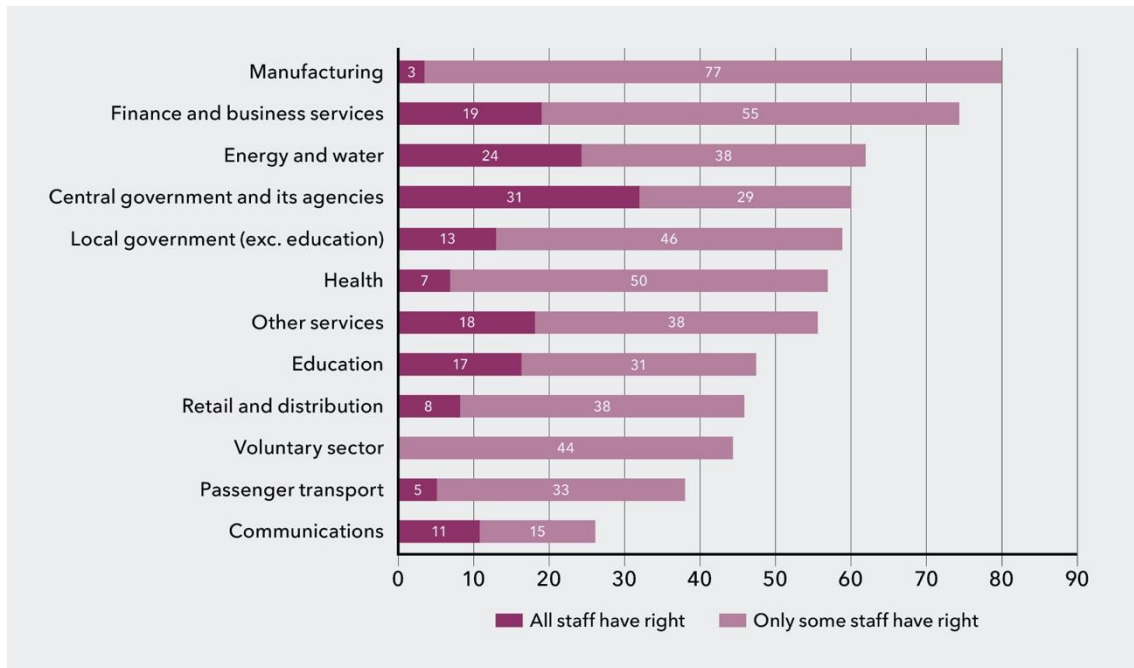
The following charts show the extent to which collective agreements in different industries provide for absolute rights to work flexibly in various ways for some or all staff.

**Chart 8: Percentage of collective agreements with absolute right to job sharing, by industry\***



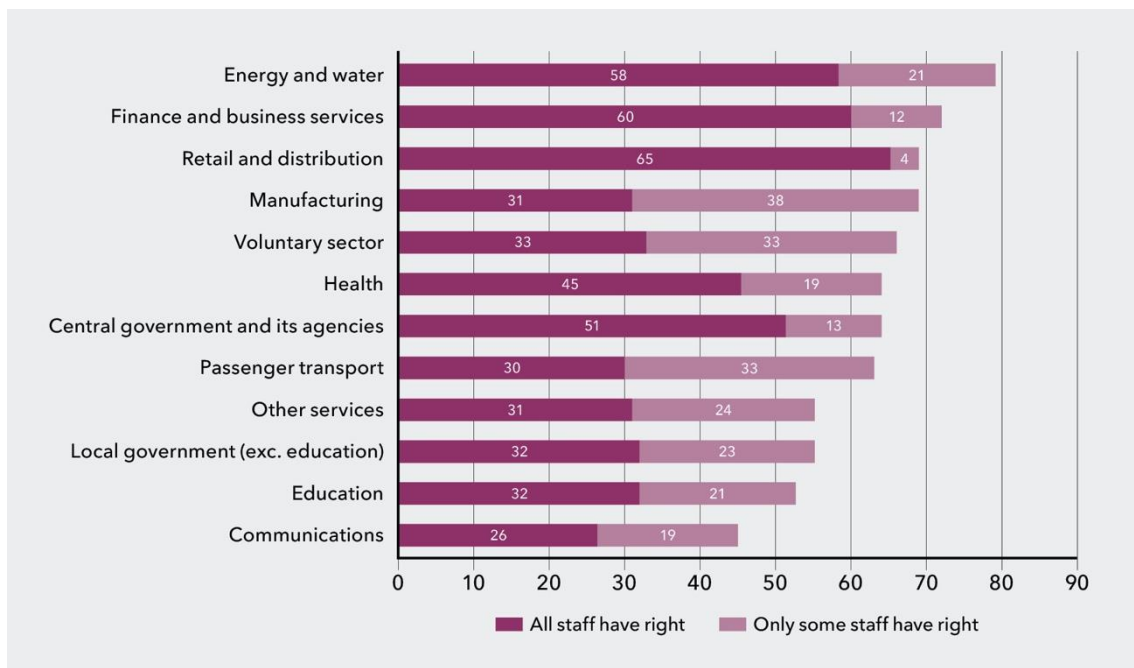
\*Media and construction industries have been excluded due to low numbers responding to question

**Chart 9: Percentage collective agreements with absolute right to work from home, by industry\***



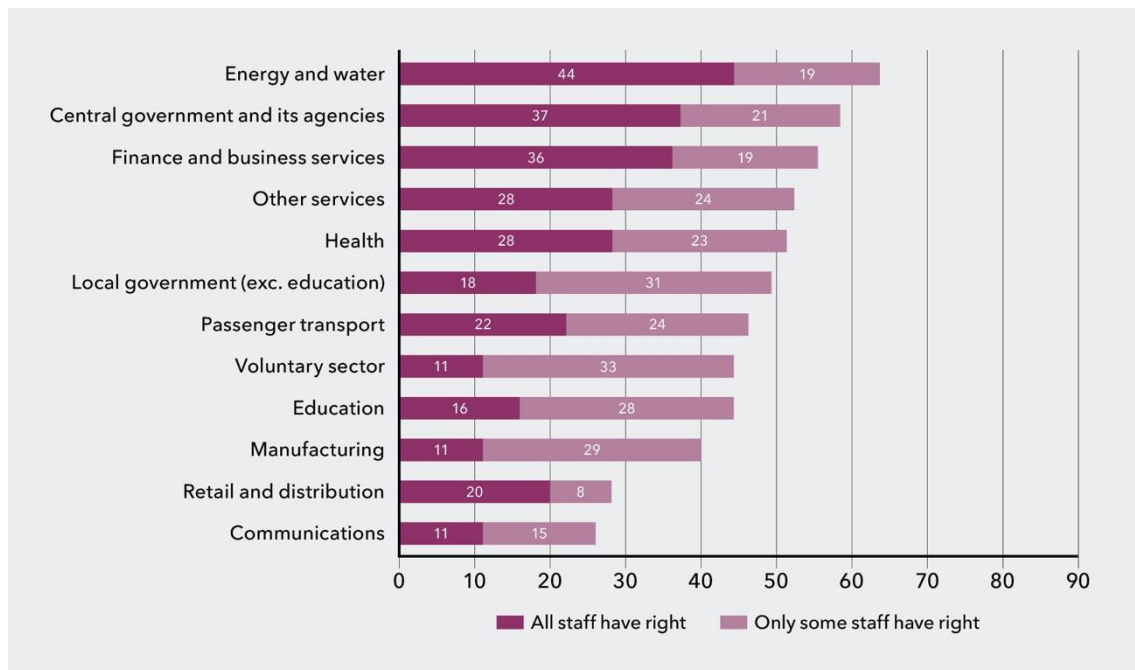
\*Media and construction industries have been excluded due to low numbers responding to question

**Chart 10: Percentage collective agreements with absolute right to work part time, by industry\***



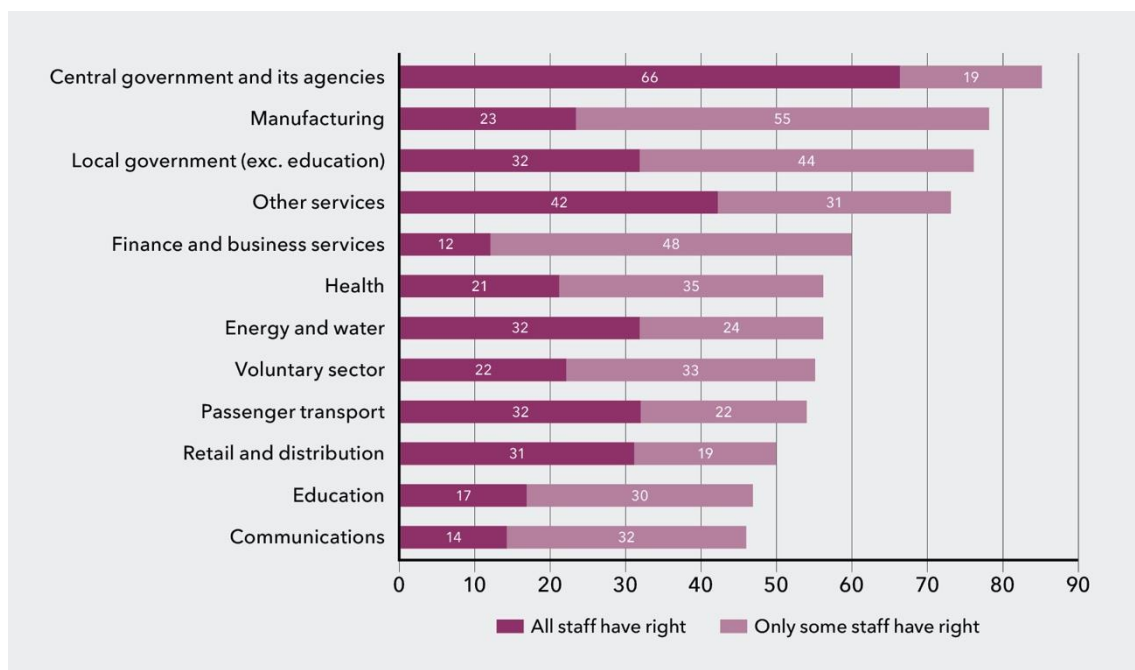
\*Media and construction industries have been excluded due to low numbers responding to question

**Chart 11: Percentage collective agreements with absolute right to work compressed hours, by industry\***



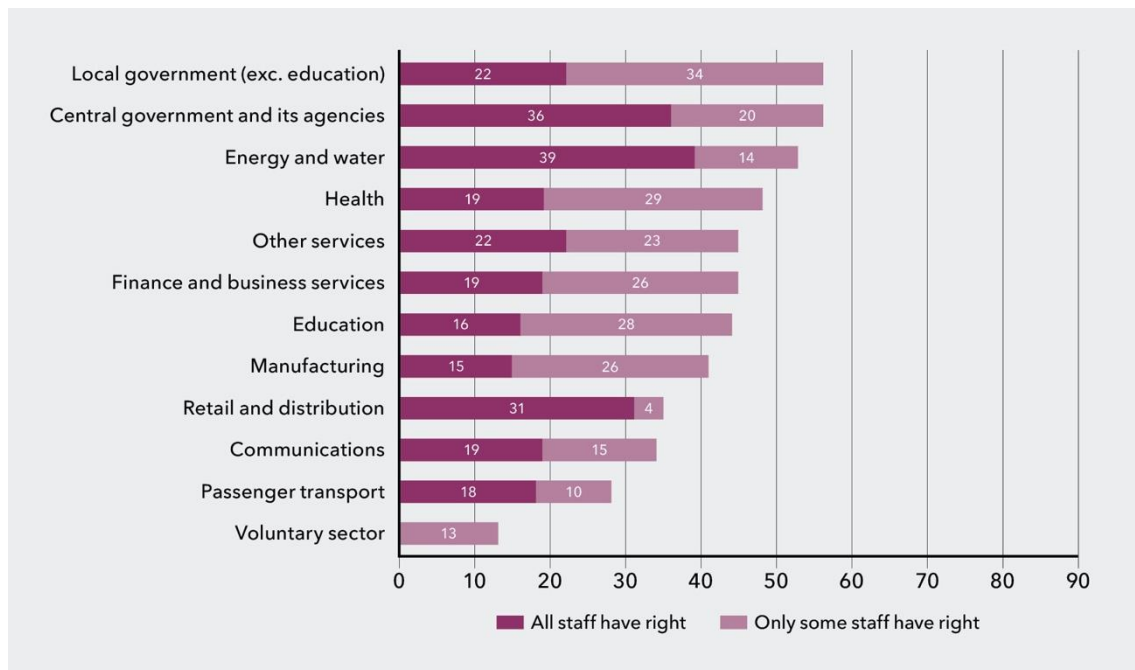
\*Media and construction industries have been excluded due to low numbers responding to question

**Chart 12: Percentage collective agreements with absolute right to flexitime, by industry\***



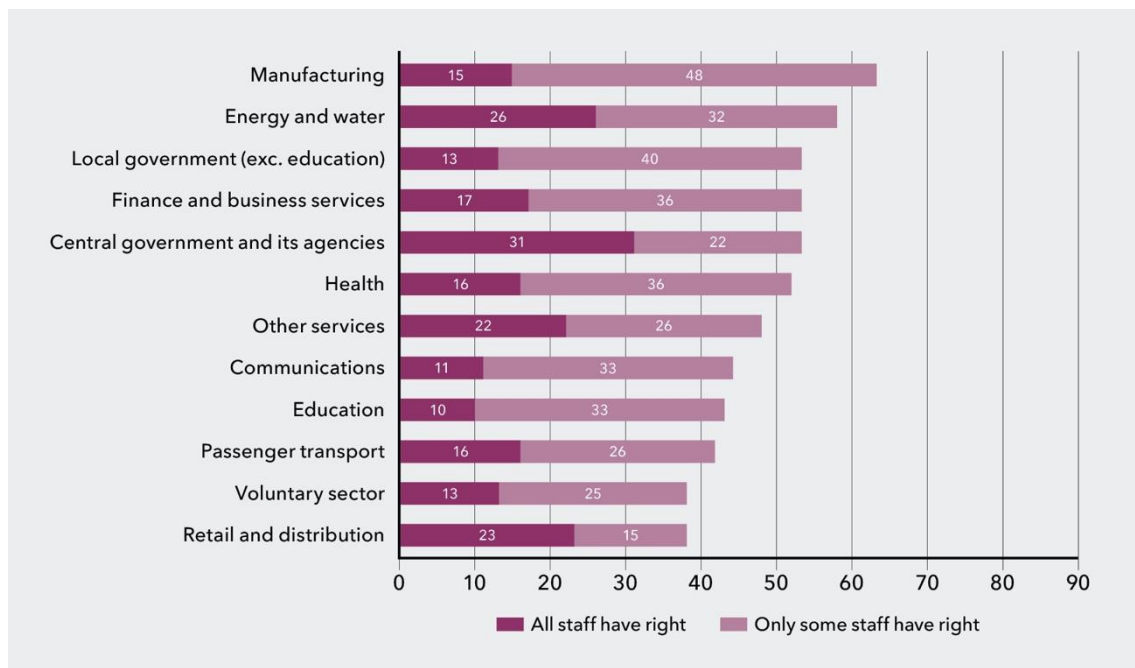
\*Media and construction industries have been excluded due to low numbers responding to question

**Chart 13: Percentage collective agreements with absolute right to do annualised hours, by industry\***



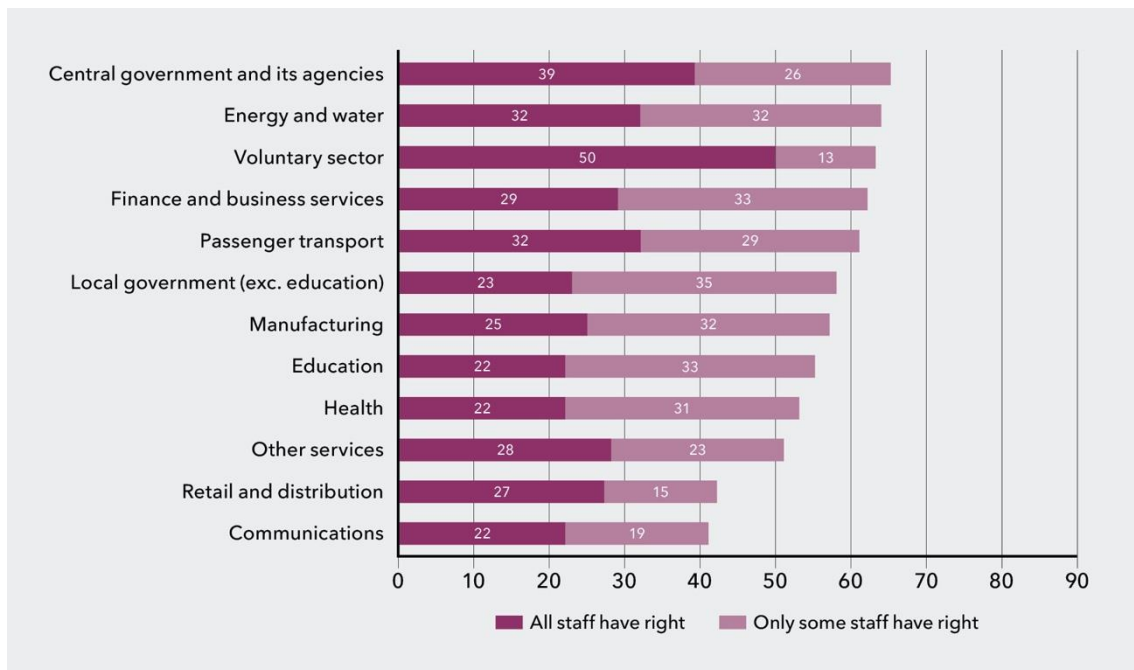
\*Media and construction industries have been excluded due to low numbers responding to question

**Chart 14: Percentage collective agreements with absolute right to do staggered hours, by industry\***



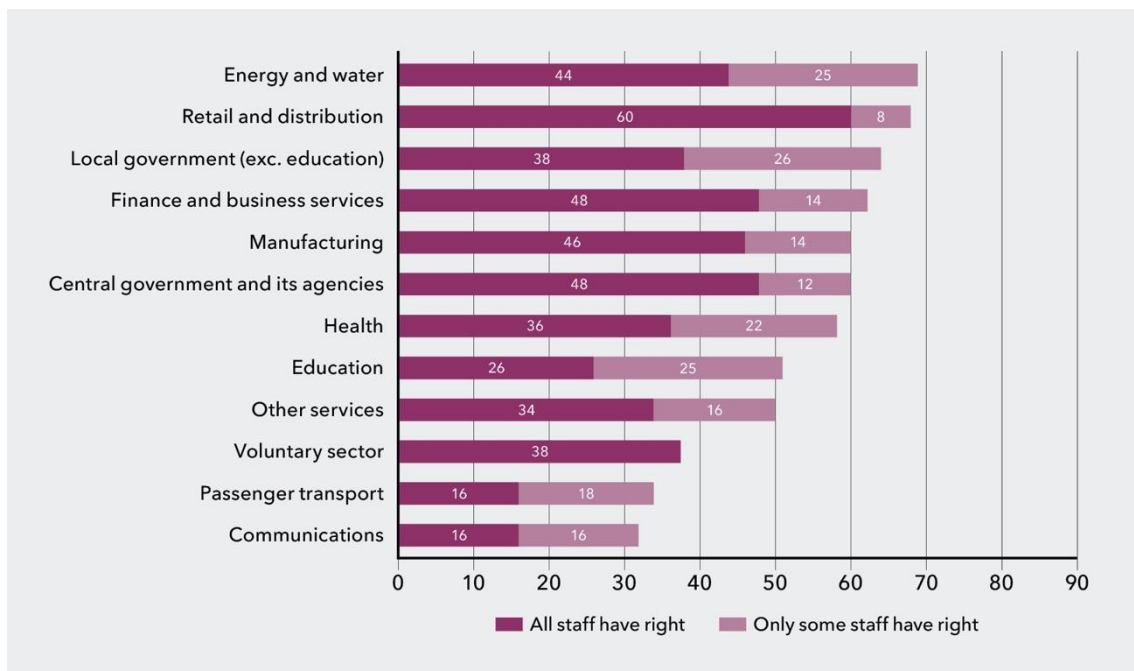
\*Media and construction industries have been excluded due to low numbers responding to question

**Chart 15: Percentage collective agreements with absolute right to mutually-agreed, predictable hours, by industry\***



\*Media and construction industries have been excluded due to low numbers responding to question

**Chart 16: Percentage collective agreements with absolute right to phased retirement, by industry\***



\*Media and construction industries have been excluded due to low numbers responding to question