



Royal Wootton Bassett Academy Trust Flexible Working Applications Policy & Guidance

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Relevant Legislation:

Equality Act 2010

Employment at Work Act

Related Policies:

Grievance Policy

Equality Policy

Introduction

Employees requesting flexible working patterns have become more common in the workplace, and the aim of this guidance is to clarify the process that should be followed when considering any application in order to ensure a fair and equitable approach to making a decision.

It is important to follow a consistent procedure for any requests because to not do so could lead to claims of discrimination. The right to request flexible working is also included in employment legislation and failure to adequately consider a request could result in an employment tribunal.

The Process

The request to consider a different working pattern should follow a process of open dialogue between the parties involved. It involves three stages: The application, the consideration of the request and the right to appeal the decision.

1. The Application

The employee should complete the Flexible Working Application Form (appendix 1) and pass to the HR team well in advance of when the change is to take effect. It is important that, before making an application, the employee gives careful consideration to which working pattern is most suitable. The employee also needs to be aware of any financial implications it might have on them in cases where the desired working pattern will involve a drop in salary and any effects it will have on the Academy and how these might be accommodated.

It should be noted that it might take **up to 14 weeks** between the initial application to work flexibly to when it can be implemented and possibly longer where difficulties arise. For employees due to go on maternity leave, it is recommended that they speak to their line manager before starting their maternity leave if they are interested in applying to work flexibly on their return.

The level of detail required will depend on the desired changes to the existing working pattern. In all cases it is in the employee's interest to be as clear and explicit as possible.

The application should set out the reasons why the employee's preferred working pattern is compatible with the needs of the business. It should provide an explanation of what effect, if any, the employee thinks the proposed change would have on the school and how they feel any such effect might be dealt with. The employee should consider if their working pattern is changed how colleagues will manage and the effect on their job.

Any changes to an employee's terms and conditions of employment will be permanent, unless both the employee and Academy agree otherwise. This will allow employees to request a temporary change to their working pattern or for the Academy to request a 'trial period' of the new working arrangements, which would be reviewed after a temporary period.

2. Consideration of the Request

Once the application has been received the Headteacher/HR will need to arrange to meet with the employee within 28 days of the date on which the application is made. (Model Letter 1).

The meeting should be held at an appropriate time and place that is convenient to both parties. It will provide both the manager/Headteacher and employee with the opportunity to discuss the desired work pattern in depth and to discuss how best it might be accommodated. It will also provide an opportunity to consider other alternative working patterns should there be problems accommodating the desired work pattern outlined in the employee's application.

The employee can be accompanied to the meeting by a representative who may be a work colleague or trade union member. The role of the companion is to support the employee, they may address the meeting and confer with the employee during it, but may not answer questions for the employee.

If the companion is unable to make the meeting, the employee must ask to rearrange the meeting within **7 days** of the date of the initially proposed meeting. If this cannot be achieved, the employee should consider an alternative companion who can attend the meeting.

There does not have to be a decision made at this meeting about whether or not to accept the new working pattern, this is an opportunity to discuss the options with all parties involved. Further information may then need to be gathered and considered by the decision maker before they are able to come to a decision.

A decision must be made after the meeting and the manager/Headteacher should write to the employee within 14 days to either:

- Agree to the application
- Refuse the application

If the manager/Headteacher needs more time to come to a decision, they must obtain the agreement of the employee for an extension to the **14 days** in which to inform them of the decision following the meeting.

3. Accepting an Application

When implementing the new working pattern

- Ensure that the correct details are forwarded to the appropriate person and that a variation to contract letter is issued
- Check if all health and safety requirements have been satisfied
- Consider who else needs to be informed, including other colleagues

4. Refusing an Application

The school may refuse an employee's application for a change in terms and conditions where it considers that one or more of the following specified reasons applies:

Business Reasons for Refusing a Request

- Burden of additional costs
- Detrimental effect on ability to meet customer demand
- Inability to reorganise work among existing staff
- Inability to recruit additional staff
- Detrimental impact on quality
- Detrimental impact on performance
- Insufficiency of work during the periods the employee proposes to work
- Planned structural changes

The letter to the employee (Model Letter 2) should state in terms that are relevant, why the requested working pattern cannot be accepted as a result of the business reason applying in the circumstances. If the argument does not look convincing to the manager/Headteacher it is unlikely to look convincing to the applicant. This is a vital stage in the constructive dialogue that maintains a good relationship between both parties.

Any facts quoted in the explanation must be accurate. It is not necessary for the Headteacher/manager to provide the detail in the explanation, but they should ensure that they are able to back up any facts should they be subsequently disputed. In some circumstances a decision based on incorrect facts to reject an application would provide an employee with a basis to make a complaint to an employment tribunal.

A tribunal does not have the power to question the business reasons for declining a request, but they will want to see evidence of any facts relied upon to reject the application and that the school has provided the employee with sufficient explanation as to why the business reason applies to the application.

5. The Appeal

An employee has the right to appeal against the decision. They must put their appeal in writing, clearly setting out the grounds for making their appeal within 10 days of receiving the written notice refusing their request.

The appeal process is designed to be in keeping with the overall aim of the right of encouraging both parties to reach a satisfactory outcome at the workplace.

Employees can appeal against the decision on a number of grounds, including:

- To bring something to the employer's attention they may not have been aware of when the application was rejected e.g. that another member of staff is now willing to cover the hours the employee no longer wishes to work
- To challenge a fact that the employer used in applying their business grounds for rejection

An employee cannot appeal if they simply disagree with the business grounds for refusing the request.

The appeal should be heard by the Trustees Panel/CEO within 14 working days of receipt of the written appeal. The employee must be given a minimum of 5 working days notice of the appeal hearing. (Model Letter 3).

At the hearing, the employee may be accompanied by a trade union representative or colleague and they are able to submit any relevant documentation they wish the panel to consider at least 3 working days before the hearing.

Appeal Hearing

The purpose of the hearing is for the Trustees Panel/CEO to consider

- Whether the basis of the decision is fair and reasonable in the circumstances
- Whether there is any new evidence to consider

The Chair of the panel will introduce the panel and explain the reason for the meeting.

The employee (or employee's representative) will present their case and the panel and Headteacher will have an opportunity to ask questions.

The Headteacher will present their case and the panel and employee (or employee's representative) will have an opportunity to ask questions.

The Chair of the panel will ask both sides to withdraw and the panel will consider the case in private.

The Chair of the panel will confirm their decision in writing within 5 working days to the employee (Model Letter 4).

The decision made by the appeals panel is final and is the end of the formal procedure within the workplace.

Withdrawal of an Application

There are three reasons why an application may be treated as withdrawn:

1. The Employee Decides to Withdraw the Application

An employee who withdraws their application **will normally not be eligible to make another application for 12 months from the date their application was made.** Where the employee decides to withdraw their application, they should notify their manager/Headteacher as soon as possible in writing that they are withdrawing their application.

If an employee informs the manager/Headteacher verbally and the manager/Headteacher does not receive anything in writing from the employee, the manager/Headteacher should confirm the employee's verbal withdrawal in writing.

2. The Employee Fails to Attend Two Meetings

Where an employee misses two meetings without reasonable cause, the manager/Headteacher may treat the application as withdrawn. The manager/Headteacher should warn the employee that they risk their application being treated as withdrawn if they miss another meeting without reasonable cause when rearranging the meeting. They should then confirm the withdrawal in writing.

3. The Employee Unreasonably Refuses to Provide the Manager/Headteacher with the Required Information

There may be occasions where the manager/Headteacher is willing to accept a request for flexible working, but requires the employee to provide them with certain information before they can do so. If an employee unreasonably refuses to provide the manager/Headteacher with the information, then the manager/Headteacher can treat the application as withdrawn. Again, this must be confirmed in writing with the employee.

Unresolved Requests

Hopefully most applications will conclude with a satisfactory outcome, either when the manager/Headteacher gives their decision or at appeal. But there will always be some cases, even after an appeal, where an employee feels their application has not been dealt with to their satisfaction.

1. Informal Approach

In the first instance, it is likely to be in all parties' interests to try to resolve the problem within the workplace. Evidence shows that the quickest and most effective way for an employee to resolve an issue is to speak to their manager/Headteacher.

It may be that there has been a simple misunderstanding of the procedure, which the employee believes affected the manager's/Headteacher's decision. If the employee feels able to discuss this with the manager/Headteacher, the issue may be resolved without the need to resort to more formal mechanisms.

For example, where a time limit has not been met in the first instance it may be far more effective to speak to the manager/Headteacher and inform them that they need to reply as soon as possible due to their breach, rather than to seek to pursue the matter at an employment tribunal.

2. Third Party Conciliation/Mediation

Despite the best efforts of both parties there will be cases where it may not be possible to resolve a disputed request at the workplace, but neither is there a desire to pursue the application in a formal manner. It may be that the issue can be resolved through the use of an internal (through central HR) or external third party mediator or conciliator. This might be someone from Acas, joint employer and trade union representatives, or another organisation. The purpose is to try to resolve the case in an informal fashion instead of immediately resorting to the more formal route of external arbitration or making a complaint to an employment tribunal.

3. Employee's Rights to Make a Formal Complaint

An employee may make a complaint to an employment tribunal or Acas Arbitration where:

- The employee has a child under the age of 6 (or the age of 18 in the case of a child with a disability) and is requesting flexible working in order to provide care for them
- The school has failed to follow the procedure properly
- The decision by the school was based on incorrect facts

An employee has no right to make a complaint where they simply disagree with the business reasons provided by the school for declining a request. Equally, the employment tribunal / Acas has no binding arbitration powers to question the employer's business reasons.

A breach of the procedure may, for example, be a failure to hold the meeting to discuss the application within the timescale (where no extension has been agreed) or where the school fails to provide all the necessary information in their notification to the employee of their decision. Missing a deadline as laid out in the procedure by one day will technically constitute a breach, although in the vast majority of cases where this is simply an oversight the problem, should be resolved at the workplace.

Equally, it is important that the manager/Headteacher ensures that the facts provided to explain why a business reason applies are correct. While a tribunal or arbitrator has no power to question the Trust's actual business reasons for declining a request, any rejection based on incorrect facts will provide a basis for making a complaint.

Protection from Detriment

An employee is protected against being subjected to detriment e.g. denial of promotion, facilities or training opportunities which would otherwise have been offered or made available by the Trust because:

- Their application to work flexibly has been granted
- They made an application to work flexibly
- They have made or stated their intent to make a complaint to an employment tribunal in respect of their application to work flexibly.

Model Letter 1

Date

Dear

Flexible Working Application

I am writing to invite you to a meeting to discuss your flexible working application which was received on.....

The meeting will take place on [date] at [time] in [location].

At the meeting you may be accompanied by a single companion, who can either be a trade union official or a fellow employee and in this respect it is your responsibility to contact the trade union to arrange this. Can you please let us know in advance the name of your chosen representative.

In the meantime, if you have any questions or concerns, please contact

Yours sincerely

Headteacher

Model Letter 2 – Rejection of FWA

Date

Dear

Outcome of Flexible Working Application

Further to our meeting on..... I am writing to inform you of the outcome of your flexible working application.

I have decided to reject your application on the grounds that
.....
.....

You have the right to appeal this decision, if you wish to exercise this Right of Appeal please put your case in writing to the Appeals Panel within 14 days of receipt of this letter. For more information please refer to the Guidance on Flexible Working Applications, paragraph 5 Appeals.

Yours sincerely

Headteacher

Model letter 3 - Notification of appeal hearing

Date..... (at least 5 working days' notice)

Dear.....

Appeal Panel Hearing

In response to your letter of(date) stating that you wish to appeal against the decision of(..the Headteacher in relation to your flexible working request).

I write to notify you that an appeal hearing has been arranged at.....(time) on.....(date - within 14 working days of receipt of written notice of appeal) at.....(place). Please note that the decision of the Appeals Panel is final

You may be accompanied by a trade union representative or colleague. Please can you let us know the name of your chosen companion.

Please can you let me have any relevant documentation that you wish to have considered at the Appeal hearing by.....[3 working days before the hearing]. The Appeals Panel/CEO will be in receipt of your letter of appeal.

The names of the Trustees panel are
(names). from the Schools HR Team will also be attending.

Please confirm that you will attend.

Yours sincerely

Chair of Appeal Panel

Cc Trade union representative

Model letter 4 – Outcome of appeal hearing

Date.....

Dear.....

Outcome of Appeal Hearing

Following the appeal hearing held by the Trustee Panel/CEO on.....(date) and on the evidence presented to the panel, the decision was that the original decision of the Headteacher be [upheld]
[overturned and decided]

The reasons for reaching this decision are as follows:

.....
.....
.....

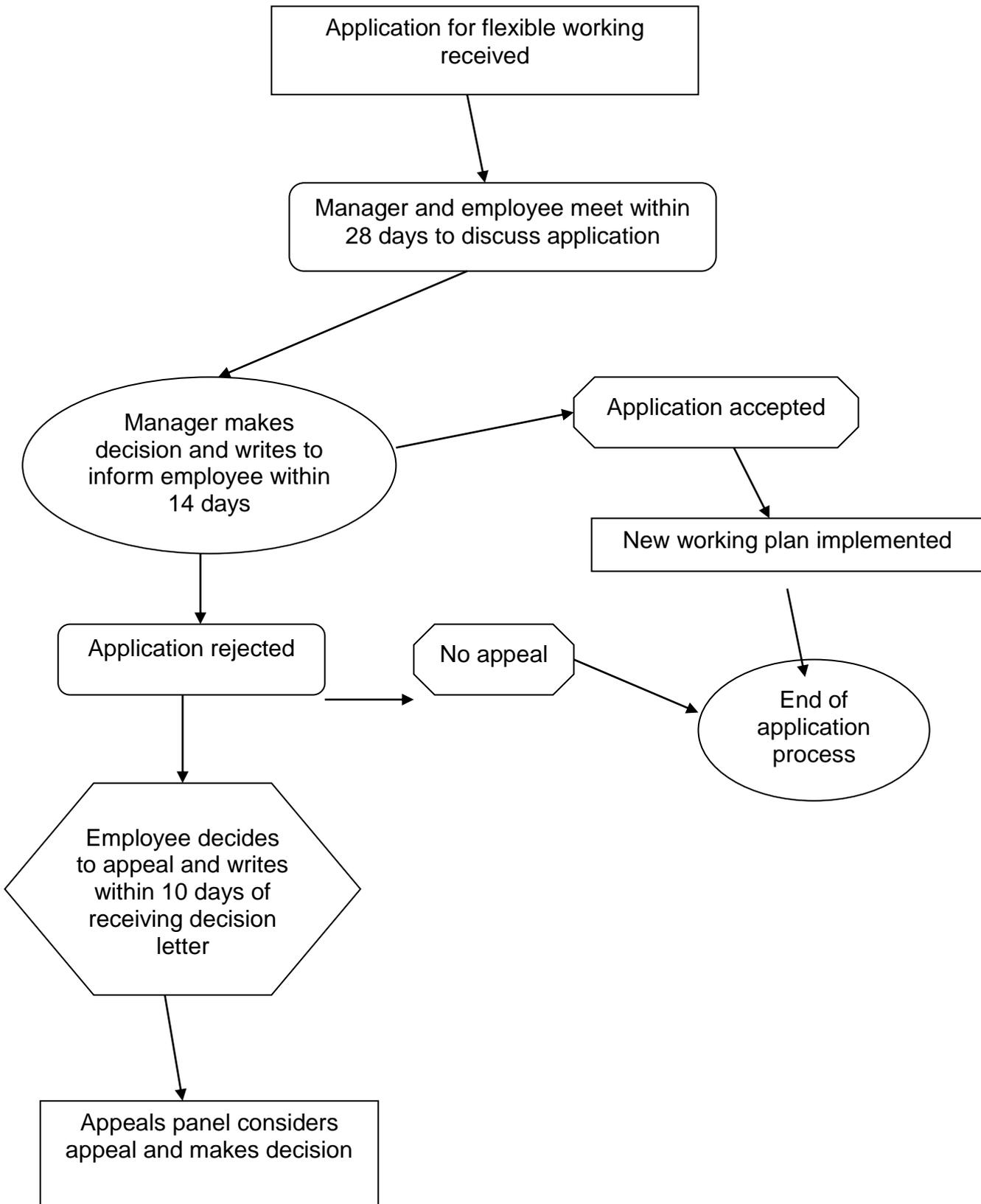
The decision of the Appeal Committee is final.

Yours sincerely

Chair of the Appeal Committee

cc Trade union representative

Flexible Working Application Process



<p>2B. DESCRIBE THE WORKING PATTERN YOU WOULD LIKE TO WORK IN FUTURE (days/hours/time worked)</p>
<p style="text-align: center;">You may continue on a separate sheet if necessary</p>

<p>2C. I WOULD LIKE THIS WORKING PATTERN TO COMMENCE FROM</p>
<p>Date:</p>

<p>3. IMPACT OF THE NEW WORKING PATTERN</p>
<p>I think this change in my new working pattern will affect my employer and colleagues as follows:</p>

<p>4. ACCOMMODATING THE NEW WORKING PATTERN</p>
<p>I think the effect on my employer and colleagues can be dealt with as follows:</p>

Name (Employee)		Date	
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PLEASE RETURN TO YOUR HEADTEACHER

EXAMPLE RETURN THIS SLIP TO YOUR EMPLOYEE IN ORDER TO CONFIRM YOUR RECEIPT OF THEIR APPLICATION – EMAIL CONFIRMATION CAN ALSO BE ISSUED

HEADTEACHERS CONFIRMATION OF RECEIPT (to be completed and returned to employee)

Dear

I confirm that I received your request to change your work pattern on: **Date:**

I shall be arranging a meeting to discuss your application within 28 days following this date. In the meantime you might want to consider whether you would like a fellow colleague or trade union representative to accompany you at the meeting.

From: _____

Date