

## **Flexible Working (Right to Request) Policy and Procedure**

### **1.0 Scope**

- 1.1 All employees who have a minimum of 26 weeks' continuous service have the right to request flexible working and to have their request seriously considered by their employer.
- 1.2 Each employee has a statutory right to submit only one request in any 12 month period.
- 1.3 The Flexible Working (Right to Request) Policy does not apply to casual workers.

### **2.0 Aims and Objectives**

- 2.1 The Council wishes, where practicable, to facilitate and support its employees in achieving a balance between their work and family life. The Council already has a range of measures in place, to assist employees in balancing their commitments, including flexi time or compressed shift patterns,
- 2.2 In line with changed legislation, the Council recognises its duty since 1 July 2014 to seriously consider requests from all employees for flexible working arrangements. Requests to work flexibly can be for any reason and are no longer limited to those employees with caring responsibilities.

### **3.0 Conditions and arrangements**

- 3.1 The timescales outlined within this document are those considered to be reasonable in normal circumstances by Lancaster City Council. The only statutory requirement regarding timescales is that the whole process, from the point that the employee has supplied full information, should be completed within 3 months, including any appeal. Where it is not possible for the request to be fully considered in the 3 month period, the time period can be extended subject to the agreement of the employee.
- 3.2 At all formal meetings employees have the right to be accompanied by a trade union representative or work colleague. A member of the HR Team should attend to provide advice to the Service Manager and/or Chief Officer.
- 3.3 If the employee fails to attend a meeting including an appeal hearing and subsequently fails to attend a second (rearranged) meeting, the flexible working request will be treated as having been withdrawn and the employee should be advised of this in writing.
- 3.4 Each request will be considered on a case-by-case basis and in the order that requests are received. Agreeing to one request will not set a precedent or create the right for another employee to be granted a similar amendment to their working pattern. Equally, flexible working requests that are accommodated in one Service area will not create a right to a similar request being accommodated in another Service area.

## **4.0 Requests for flexible working**

4.1 A request for flexible working could include:

- a request to change the number of hours that an employee works.
- a request to change the pattern of hours worked.
- a request to job share.
- a request to perform some work from the employee's home.

4.2 A request for flexible working may be permanent or temporary. Where a request for flexible working is temporary, e.g., to cope with a bereavement, the reason for the request should be clearly explained on the application form, which will include the dates when the temporary arrangement will be in place.

4.3 Where an employee requests a variation in their hours, including a reduction in working hours, the change will be permanent following any agreed trial period. It is not possible to guarantee that if, at a future date the employee wished to increase their hours or return to their existing pattern of work, such a request could be granted since it would be dependent upon service need at that time.

4.4 Where a request is made for a temporary change in hours, it will be the normal expectation that the employee will automatically return to their substantive hours or pattern of work at the end of the temporary period. Trial periods will not apply to temporary requests for flexible working.

4.5 Where a request is received for an employee to work from home on a regular basis, this should be considered in line with the document "Guidance on Flexible Working Requests" [INSERT URL] along with any relevant guidance or policies relating to the use of Information Technology and Health and Safety. Guidance documents will be developed over time as changes to operating arrangements occur.

## **5.0 Application Process**

5.1 All requests must be made in writing and submitted in the first instance to the relevant senior Service Manager. Employees are encouraged to complete the **Flexible Working Application Form**, which is available from the HR Team or is accessible from the HR pages of the intranet. Requests can however be made by email or letter.

5.2 Note should be taken of the date of receipt of the Flexible Working Application Form or other communication.

5.3 If the employee has not submitted their request via the Council's Flexible Working Application Form, the Service Manager must ensure that sufficient information has been obtained, in writing, from the employee to enable the request to be properly considered.

5.4 Any request for flexible working must include:

- the date of the application;
- the changes that the employee is seeking to his/her terms and conditions;
- the date on which the employee would like the revised terms and conditions to come into effect;
- what effect the employee thinks the requested change would have on the organisation;
- how, in his/her opinion, any such effect might be dealt with;
- a statement that this is a statutory request;
- whether or not the employee has made a previous application for flexible working;

- if the employee has made a previous request, when they made that application; and
- whether the request is in relation to the Equality Act 2010, for example, as a reasonable adjustment for a disabled employee.

## **6.0 Action by the Service Manager**

- 6.1 In order to comply with statutory timescales, it is important that the Service Manager reviews the application promptly.
- 6.2 If an application is received that does not contain sufficient information to enable the employee's request to be properly considered, the Service Manager (with HR support if required) should explain to the employee where additional or amended information is required, e.g., further information on the reasons for the request, or how the impact of the request can be mitigated.
- 6.3 The 3 month period will not start until the employee has supplied full information to enable their request to be considered.
- 6.4 Once the Service Manager has received and reviewed a fully completed application, containing all the necessary information to assist in making a decision, the Service Manager will complete the relevant section of the Flexible Working Application Form and pass it to the Service HR Partner to add their comments.
- 6.5 Once comments have been added, the Flexible Working Application Form will be submitted to the Service Chief Officer for consideration, who will normally arrange a meeting with the employee to discuss the request.

## **7.0 Action by the Chief Officer – arranging a meeting**

- 7.1 Chief Officers must seriously consider the business case for accepting or rejecting an employee's request for flexible working, by carefully weighing up the potential benefits to the employee and the Council, against any adverse impact of implementing the change(s).
- 7.2 The Chief Officer will normally hold a meeting to consider the employee's request within **21 working days** of a completed application (or other written request) being received by the Service Manager. A template letter inviting the employee to a meeting is available from HR.
- 7.3 As the employee can be accompanied at the meeting by a trade union representative or work colleague, 5 working days' notice of the meeting should be given. However, if the employee is willing to waive their right to notice, the meeting can take place sooner.
- 7.4 If, for any reason, it is not possible to meet the above timescale, the Chief Officer should explain this to the employee and propose an alternative timescale.
- 7.5 On occasion it may be possible for the Chief Officer to consider and subsequently approve the request without meeting with the employee, however it is likely that these cases will be the exception. Even where the matter is relatively straightforward it may be appropriate for the Chief Officer to meet with the employee to ensure that both sides understand the request and are clear on the implications of their request, prior to the arrangement being formalised.
- 7.6 In addition to being accompanied by a member of the HR Team, the Chief Officer may ask the Service Manager to be present at the meeting to assist in the discussion around the employee's request.

7.7 The Chief Officer may:

- approve the application as submitted.
- approve a proposed amendment to the application.
- reject the application.
- adjourn the meeting to seek further clarification on any points raised.

If the meeting is adjourned for another day, to seek further information, to allow the Chief Officer to make an informed decision, it should be reconvened as soon as practicable.

7.8 After discussion has taken place, the Chief Officer may briefly adjourn the meeting, to consider the request and to make their decision. The Chief Officer may choose to reconvene the meeting to verbally advise the employee of their decision.

7.9 In all cases, and regardless of whether the request is agreed, partially agreed or rejected, the decision be provided to the employee in writing within 10 working days.

## **8.0 If the Chief Officer approves the application**

8.1 The employee will receive written confirmation of the Chief Officer's decision within 10 working days of the date of the meeting, setting out any action on which the agreement is dependent and establish a start date. The Chief Officer should seek advice from HR over the content of the letter.

8.2 Once the Chief Officer has agreed a change this will, subject to paragraph 8.5.2 below be treated as permanent and the employee has no automatic right to revert back to his/her previous pattern of work. Exceptions to this will include temporary changes, for a specified time period or, for operational reasons, where the change cannot be agreed on a permanent basis. Equally, where it is agreed that a trial period should take place, to consider if the requested change is operationally viable, the trial period will not be treated as a permanent change.

8.3 Where the change is a temporary, time limited, change the employee will automatically revert back to their original working arrangements at the end of the temporary period.

8.4 Where the flexible working request will result in a change to the employee's contracted working hours, whether temporary or permanent, a Change of Conditions form **must** be completed, so that budgets may be adjusted accordingly and a revised contract of employment created.

### **8.5 Home working requests**

8.5.1 Where a request for a contractual right to work from home is received (as opposed to ad hoc working from home arrangements), the Service Manager and Chief Officer will consider the operational impact of the request and will liaise with ICT to discuss any issues relating to the provision of IT facilities.

8.5.2 Where a request for a contractual right to work from home is agreed, this should be reviewed on an annual basis. It is recognised that future changes to structural or operational arrangements across the Council or the Service could result in home working arrangements being amended or ceasing. Where this is necessary, and after discussion with the employee, contractual notice would be served.

8.5.3 If, for any reason, it is not possible for staff to work from home, due to an IT issue or some other unforeseen event, the home working arrangement will temporarily cease until such time as the matter has been resolved.

## **9.0 If the Chief Officer partially accepts the request**

- 9.1 In some circumstances the Chief Officer may be able to agree some, but not all, aspects of the employee's request. In many cases, where the original request cannot be accommodated it may be possible for a compromise to be agreed and subsequently actioned.
- 9.2 The employee still has the right to appeal against the Chief Officer's decision, if their request is only partially upheld.
- 9.3 Where the employee requests a reduction in working commitment, the Chief Officer may agree the request subject to the need to fill the remaining hours of the post. In such instances there is likely to be a delay caused by the need to recruit, before the revised working arrangement can be put into practice. Where this is the case the Chief Officer must explain their decision in writing and advise the employee that they may exercise their right to appeal against the delay should they wish.

## **10.0 If the Chief Officer rejects the request**

- 10.1 If the Chief Officer considers that there are business reasons for rejecting the request, they will outline those to the employee. The decision can be provided verbally and followed up in writing, or provided solely in writing. The employee will receive written confirmation of the decision, setting out the reasons for declining the request, within 10 working days of the date of the meeting. The letter will also set out the right of appeal.
- 10.2 Reasons for declining a request must be based on one or more of a number of legally specified grounds, these are:
- the burden of additional costs;
  - detrimental effect 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; or
  - planned structural changes.

## **11.0 Trial periods**

- 11.1 In some cases the Chief Officer may decide to reserve their decision pending a trial period, to ascertain if the requested change is workable for both parties.
- 11.2 The trial period should be long enough to allow the likely effects of the changed working pattern on the business to be established. The length of a trial period will vary depending upon the nature of the flexible working request and the type of work that the employee normally undertakes. In most cases a trial period of 3 months should be sufficient.
- 11.3 A trial period can be beneficial for both sides, especially where there is some doubt as to the viability of the working arrangements requested by the employee. It can give both the Chief Officer and the employee an opportunity to review how the new arrangements work in practice and whether they are likely to create any practical difficulties for the service or the Council as a whole.

#### 11.4 Arranging a trial period

- 11.4.1 If the Chief Officer agrees to a trial period, it is very important that the letter to confirm the trial period clearly states that changes to the employee's terms of employment have been agreed for a trial period only. If this is not clear, the employee will, by default, have the right to regard the changed terms of employment as a permanent variation to his or her contract. The letter should also explain that the trial period can be cut short if there are concerns over the changed working arrangements. The Chief Officer should seek advice from HR with regard to the content of the letter to confirm a trial period.
- 11.4.2 Where the trial period will result in a change to the employee's contracted working hours, a Change of Conditions form **must** be completed, so that budgets may be adjusted accordingly and a revised contract of employment created confirming the temporary variation to the contract during the trial period.

#### 11.5 Changes/early termination during the trial period

- 11.5.1 If for any reason, during the trial period it is clear that the arrangement is not working, either side may request a meeting to review the working arrangements at any point during the trial period. It is not in the interest of either party to delay an open discussion about any issues causing concern and to attempt to resolve them.
- 11.5.2 If either party is finding the new working arrangements unworkable, the aim will be to reach a new flexible working arrangement that is suitable to all parties. Where a new arrangement is agreed, both sides may wish to agree to a further trial period, which should not exceed 3 months. For practical reasons it may be necessary to agree to a shorter timescale to trial the revised arrangements, so that the trial period is not overly extended.
- 11.5.3 If it is not possible to agree to a new working arrangement, during the trial period, the Chief Officer will, in liaison with HR, write to the employee to advise them that the trial period will cease. Since the employee will have been fully aware that the trial period can be ended early, it is not a requirement to give the employee notice of this decision. However, from a practical point of view it may be helpful to the employee to give them a weeks' notice of the decision to end the trial period.
- 11.5.4 Where a trial period is cut short this is in effect a decision to refuse a request for flexible working. The Chief Officer must therefore advise the employee in writing of the decision and inform the employee of their right of appeal against this decision.

#### 11.6 End of trial period review

- 11.6.1 Towards the end of the trial period, the Chief Officer and Service Manager will meet with the employee to discuss the success, or otherwise, of the new working arrangements.
- 11.6.2 If the new arrangements are considered to be successful, the change will become permanent from that point. The Chief Officer in liaison with HR should write to the employee to advise them of their decision. A Change of Conditions form **must** be completed so that the permanent change can be formally actioned.
- 11.6.3 Alternatively the Chief Officer may decide, for business reasons, that the flexible working arrangements are not workable and will advise the employee of this in the meeting. If any other options are available these can be explored at this point. If no other options are available then the employee's working arrangements will revert to those in place under his/her contract of employment. This decision and the employee's right of appeal will be confirmed in writing within 5 working days of the meeting.

## **12.0 Right of Appeal**

- 12.1 Employees wishing to appeal against a Chief Officer's decision to reject their application for flexible working arrangements should do so by writing to the HR & OD Manager, stating their grounds for appeal, within 10 working days of receiving written notification of the rejection of their request.
- 12.2 In line with the ACAS guidance, appeals will be considered if:
- there is new information that was not available to the Chief Officer at the time they made their original decision, or
  - the employee thinks the application was not handled reasonably in line with the Council's policy.
- 12.3 Wherever possible the Council's Chief Executive will hear appeals within **15 working days** of the HR & OD Manager being informed in writing that the employee wishes to appeal. If it is not possible to convene a meeting with the Chief Executive within 15 working days, an extension of time may be agreed between the Council and employee. In these circumstances, the HR & OD Manager will write to the employee, specifying why the extension is required and a date when the appeal will be held.
- 12.4 The employee will have the right to be accompanied at the appeal hearing by either a work colleague or trade union representative.
- 12.5 The adviser to the Chief Executive (normally the HR & OD Manager or his/her nominee) will write to the employee within **5 working days** of the appeal hearing to notify the employee of the Chief Executive's decision.
- 12.6 If the Chief Executive upholds the appeal the Chief Officer will be requested to reconsider the original request.
- 12.7 If the Chief Executive dismisses the appeal the notification from the Chief Executive will state the grounds for the decision and contain a sufficient explanation as to why those grounds apply. There is no further right of appeal.

## **13.0 Review**

This policy and procedure will be reviewed two years after implementation or earlier in the event of changes in legislation.