

Building a better balance

Flexible working information pack
for CSP Stewards



Supporting you to support your members

Achieving a good and productive work life balance is vital for all our members.

Over three quarters of CSP members are women and the majority are below age 40. This means that many have primary childcare responsibilities that they need to fulfil alongside their working lives. In addition to this, there are many other reasons why people may need to work flexibly. Some may be taking care of elderly or sick relatives; increasingly men want to take a greater role in childcare; others might have a long term health condition or disability requiring reduced working hours.

Organisations that promote flexible working find that it aids recruitment and retention, improves productivity and stress and makes staff feel valued and motivated. It is not only good for employees and employers but also good for patients and quality of care. It can seem daunting to run a service where many staff work flexibly but the long term benefits it brings can far outweigh the initial effort involved.

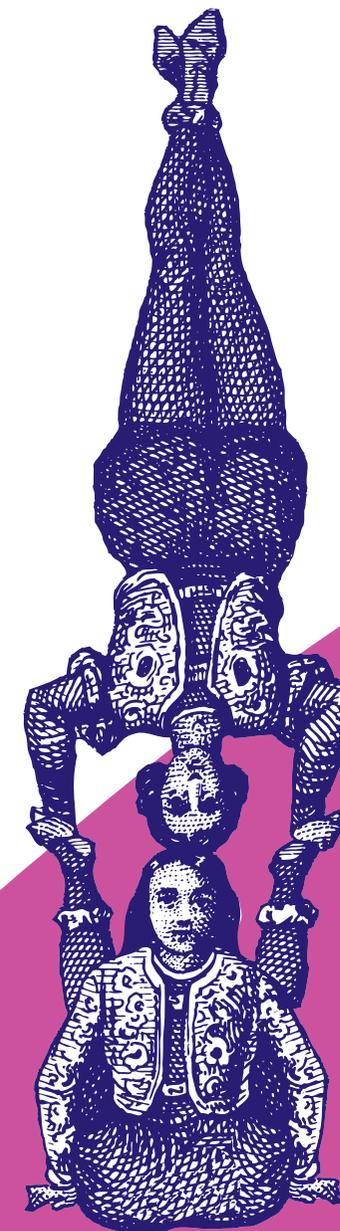
This information pack has been primarily written for use by CSP stewards but we hope it will also be of use and interest to many other members and their managers. It provides advice and guidance on the right to request flexible working and the benefits it brings and considers how to overcome any potential barriers to its introduction.

The pack is a key resource in the CSP's 'Building a better balance' campaign which aims to raise awareness about flexible working and give practical advice on ensuring that alternative working patterns work well for staff, employers and patients alike. For more information, including case studies and further guidance visit our web page www.csp.org.uk/buildingabetterbalance

We hope you will find this information pack a useful tool when supporting members with their requests. Please contact your CSP Senior Negotiating Officer for further support and advice if needed.

Jill Taylor, Chair CSP Industrial Relations Committee

Claire Sullivan, Director of Employment Relations and Union Services



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Section 1

Introduction

Flexible working is an important issue for CSP members affecting both women and men who want to achieve the work/life balance that is right for them. Over 75 per cent of CSP members are female and well over half are aged 40 or below with many having children to care for.

In a 2016 survey of CSP stewards 44 per cent said they had supported members working in the NHS and seeking flexible working arrangements in the past two years. Nearly one in five said that they were aware of members leaving their NHS job because they could not negotiate the flexible working arrangements they needed.

The purpose of this pack is to provide CSP stewards with the information they need to help support members working in both the NHS and other sectors seeking flexible working arrangements. It also includes a checklist to help you make sure your employer's flexible working policy is as supportive as possible and is known and understood by your members.

The majority of cases that stewards are likely to be involved in will be about women returning from maternity leave. There are many other members who can benefit from a positive approach by their employer to requests for flexible working arrangements. This could include members wanting to reduce their hours prior to retirement; men who want to take on a greater role in childcare; and those needing to combine work with caring for elderly or sick relatives.

Employers are required to consider flexible working options as part of their duty to make reasonable adjustments for disabled staff and job applicants under the Equality Act and to support staff who undertake daily religious observance or a holy day.

Flexible working provides benefits to both staff and employers. At a time when pay increases are low this can be particularly important as a way for employers to attract and retain staff.

Details of the ACAS (Advisory, Conciliation and Arbitration Service) and government guides and Northern Ireland equivalents referred to in this document and other helpful information and references are contained in Section 9.

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Section 2

What is flexible working?

Flexible working is any type of working arrangement that gives some degree of flexibility on how long, when and where an employee works.

It can cover a range of options but the ones most commonly found in physiotherapy include:

- **part-time working** – working less than the standard hours for the job (37.5 per week in the NHS for example)
- **job sharing** – sharing the duties and responsibilities of the post with another employee
- **compressed hours** – working full time hours over fewer, longer days (eg four days instead of five)
- **staggered hours** – different starting, break and finishing times for employees
- **annualised hours** – where an employee's contract provides for the total number of hours to be worked over the year, allowing flexible working patterns to be worked throughout the year
- **flexitime** – where an employee can choose, within certain limits, when to begin and end their working day provided they cover set core hours and work an agreed number of hours within a set accounting period, usually a month
- **flexible rostering** – using periods of work of differing lengths within an agreed overall period
- **term time working** – where an employee reduces their hours or takes time off during school holidays. Any weeks above their annual leave entitlement when they do not work will be unpaid



Section 3

Benefits of flexible working

There is a raft of evidence about the benefits that flexible working can bring to both CSP members and their employers and the beneficial impact on patient care.

For the member:

- allows the member to combine family, caring or other responsibilities and interests with their working life resulting in a better balance between the two
- a poor work/life balance can lead to mounting stress and ill health – something that can be avoided with a positive flexible working approach
- gives the employee a greater sense of responsibility, ownership and control of their working life
- reduces sickness absence and stress while increasing job satisfaction
- leads to better relationships with others at work and at home

- makes the member of staff feel valued because their employer is taking account of their personal needs
- can be an attractive employment benefit especially if pay increases or career opportunities are limited

For the employer:

- can help them retain valued and experienced staff who are able to balance the demands of work and their home life resulting in them feeling more satisfied and motivated
- increases productivity, loyalty and morale leading to better quality patient care and outcomes
- avoids the high costs of recruiting and inducting new staff along with the impact on existing staff of covering vacancies and supporting new people
- where flexible working is promoted in job adverts this will increase the pool of potential applicants rather than limiting it only to those prepared to work full time
- increases the diversity of employees ensuring they better reflect the patient population
- provides an attractive recruitment benefit especially in areas and specialities where managers are struggling to recruit

- can help provide cover for extended service hours
- job sharing brings the benefit of two sets of skills and experience to the post
- staff will be more refreshed if working part time and better able to cope with the rigorous mental and physical demands of the job
- in a variety of organisations productivity has been shown to improve among those allowed flexible working arrangements
- encourages more women to apply for leadership roles if available on a flexible basis, helping to address their under-representation in senior jobs
- studies in the NHS have shown that in organisations where staff well-being is good, this has a positive impact resulting in good patient experiences and outcomes

Section 4

10 steps for stewards to success

As a CSP steward you can help members to build a better balance in their lives – and help convince their managers it’s a good deal all round. Here’s how:

- 1 Check that the member seeking flexible working has thought through and understands the impact of any changes to their work pattern** (eg on their pay, annual leave allowance, pension and other terms and conditions). Also that they understand that any change agreed will be permanent (unless for a trial period or an agreed limited time) and that they won’t have the right to revert back to their old working pattern unless the employer agrees.
- 2 Get everything in writing including any agreement reached.** Keep copies of all letters, emails and notes of phone calls. This evidence may be needed later if the employer does not stick to the procedure or timescales.
- 3 Remember flexible working is not a right.** The law only provides a right to request – the employer does not have to agree to the request but must give it serious consideration.
- 4 Make sure any requests are submitted well before the member needs the new arrangements to start.** The employer must handle any requests in a ‘reasonable manner’ and within three months from receiving the request (unless your local policy has a shorter timescale).
- 5 Your local flexible working policy may have provisions which are more beneficial than the statutory legal minimum.** This could include shorter timescales for the employer to respond, allowing requests from day one, or a strong commitment to try to accommodate requests for a greater range of jobs at all levels in the organisation. Make sure you are familiar with it. You should also consider making an informal approach first to see how the manager responds.
- 6 Under the statutory provisions, only one right to request can be submitted in any 12 month period so it is important to do your research and produce as strong a claim as possible.** Be prepared to counter any reasons for refusal and to negotiate an arrangement that suits the member and the service.
- 7 There is nothing to stop the employer allowing more than one request per year, for example if the member’s childcare arrangements change.** So it is worth asking even if the member has already put in a request in the last year.
- 8 Be prepared to negotiate and compromise to achieve an agreement that suits the member and the service.** It is up to the member, with their CSP steward’s help, to think through how the new arrangement might work and how any problems can be overcome – it is not up to the manager to do this initial thinking. Suggest to the member that they find out how other staff have set up successful working arrangements and talk to physiotherapy colleagues about how it could work. They may find the job share partner they need or someone else wanting to reduce their hours freeing up funding for a whole new post.
- 9 Under the statutory scheme, if the member does not attend a meeting or any subsequent rearranged meeting without ‘good reason’ the employer can treat the request as having been withdrawn.** If a member can’t attend for a good reason (eg sickness or childcare emergency) you should get written confirmation from the employer that they agree this was a ‘good reason’. Otherwise you may have to wait 12 months before you can submit another request.
- 10 If your local policy is not up to scratch work with staff side colleagues to negotiate improvements.** See the checklist for stewards on negotiating and improving your local policy in this pack.

Section 5

Members' rights and best practice

Who has the right to request flexible working?

Any employee has the right to submit a statutory flexible working request wherever they work provided that they:

- have been employed by their current employer for at least 26 weeks by the time they make their request
- have not made a formal request for flexible working in the last 12 months – whether or not it was agreed

Note that this right does not apply to agency workers (other than those returning from a period of parental leave) or the armed forces. Employers can still consider requests from people who do not have the statutory right if they choose to.

An employee can withdraw a request at any time before it is agreed. This will mean that they have to wait another 12 months before they can submit another request – unless the employer agrees otherwise.

Flexible working in the NHS – a positive approach

Section 34 of the NHS terms and conditions handbook covers flexible working. NHS employers will:

'develop positive flexible working arrangements which allow people to balance work responsibilities with other aspects of their lives.'

Section 34.7 states that flexible working arrangements should be available to all employees.

In addition:

'All jobs should be considered for flexible working; if this is not possible the employer must provide written, objectively justified reasons for this and give a clear, demonstrable operational reason why this is not practicable.' Section 34.8

Section 15.38 outlines the provisions covering women returning from maternity leave wishing to reduce their hours.

'If, at the end of maternity leave, the employee wishes to return to work on different hours, the NHS employer has a duty to facilitate this wherever possible. The employee will return to work on different hours, in the same job. If this is not possible, the employer must provide written, objectively justifiable reasons for this and the employee should return to the same pay band and work of a similar nature and status, to that which they held prior to their maternity absence.'

All jobs should be considered for flexible working; if this is not possible the employer must provide written, objectively justified reasons for this and give a clear, demonstrable operational reason why this is not practicable.

If you work in the NHS check that your policy is as supportive. If you work in another sector check if your employer has their own policy which may also be better than the legal minimum.

Section 6

How to apply

What information should be included in the request?

Gov.uk has a standard FW(A) Flexible Working Application Form that you may wish to use and can access here:

<https://tinyurl.com/m4lkpwj>

Check whether your employer has their own standard form for requests and what guidance they give on the information that needs to be included. The request must be made in writing (by letter, email or fax) and must include the following.

- state that this request is being made under the statutory right to request flexible working
- set out the working pattern requested and the date the member wants it to start. If you are looking for a temporary change be clear about how long you want this to last
- explain what effect, if any, the member thinks the new working patterns will have on the service and how this could be dealt with. It is very important to work with the member and other colleagues to think this through – the employer is not expected to do this initial thinking

- you don't have to explain why the member wants the change, but it may be helpful. For example, if it is for childcare reasons this could help support a claim later for indirect discrimination if the request is refused
- state whether or not the member has submitted a previous request, and if so when that was (it must be more than 12 months ago). If it is less than 12 months ago explain why a new request is being made – the employer can still choose to consider it
- the member must sign and date the application and keep a copy
- ask the employer to acknowledge receipt of the request in writing

What happens if the employer agrees the request?

Usually the employer will want to meet with the employee and their CSP steward to make sure they understand the new arrangements and that nothing has been overlooked. Once agreed the employer should either issue a new contract of employment or a letter confirming the agreed contractual variation setting out the hours and days the employee will work and when the new arrangement comes into effect. This must be within 28 days of approving the request. If it is to be a

temporary arrangement or is to be reviewed this should also be specified with start and end date and timescale for review. Where the hours or starting times have been varied the employer must issue an amended written statement of particulars under Section 4 of the Employment Rights Act 1996. This must be issued within one month of the changes taking place.



Section 7

If the manager says no

The employer must deal with the request in a reasonable manner and give a decision within 3 months of the request. See page 10 for different timescales in Northern Ireland.

Although 'reasonable manner' is not defined in the law, the ACAS Code of Practice says that employers should:

- consider the request
- arrange a meeting with the employee as soon as possible where they can be accompanied by a work colleague (eg their CSP steward)
- discuss the request with the employee in a private place where the discussion will not be overheard
- consider the request by looking at the benefits of the employee's request and weighing this against any adverse business impact
- inform the employee of their decision in writing as soon as possible

ACAS recommends having a trial period after which you will all meet to review how things are going, resolve any problems and see if it is sustainable in the long term.

When can the employer consider a request has been withdrawn?

Be aware that this can happen not only because the member has told the employer (verbally or in writing) that they have withdrawn their request but also if:

- the member has not attended a meeting (or subsequent rearranged meeting) to discuss the request or as part of the appeals process without good reason
- the member has unreasonably failed to provide information that the employer needs to decide whether to agree the request

Can we appeal against a refusal?

Check your local policy to see what the rights and timescales are for appeals. There is no longer a statutory right to appeal (except Northern Ireland) but the ACAS Code states that the employer should allow the employee to appeal the decision and this should be done within three months of receiving the request (unless both sides agree an extension). Remember if the member fails to attend any meeting (and subsequent re-arranged

meeting), including an appeal, without 'good reason' the employer can treat the request as withdrawn.

There is no guidance in the ACAS guide or code about what suitable grounds for appeal are. Check your local policy and if it is not clear the best approach is to use the grounds for an employment tribunal claim. These are:

- employer failed to deal with the request in a reasonable manner
- employer failed to notify the employee of the decision, including any appeal, within 3 months of the date of application
- the application was refused on a ground that is not a valid business reason
- the decision was based on incorrect facts
- the employer treated the employee's request as withdrawn without having good grounds for doing so

When challenging the employer on the basis of incorrect facts you should ask them on what factual basis they have made their decision. If the employer is unable to provide this evidence, then a claim that their decision was based on incorrect facts may succeed.

You can consider using your grievance procedure if you are unhappy with the outcome of the appeal.

What options are there if internal appeals and grievances are unsuccessful?

Ultimately the member may have an employment tribunal claim but would first need to enter into early conciliation with ACAS. In Northern Ireland they need to approach the Labour Relations Agency for conciliation. The grounds for a tribunal can only be a failure to follow procedure or that the decision was based on incorrect facts. It cannot be just because you disagree with the business reasons the employer gave.

It is very important before reaching this stage that you discuss options with your CSP Senior Negotiating Officer (SNO) as early as possible. There are strict time limits which apply to the tribunal process, and the early conciliation process needs to be started within three months less one day from the date the employer first refused the request or wrongly treated it as withdrawn.

What happens if the employer still hasn't made a decision when a member is due to return from maternity leave?

You should contact your employer pointing out that the situation is now urgent; asking them for a decision within seven days; and giving details of previous communications and attempts to contact them.

Timescales and other rights in Northern Ireland

In Northern Ireland there are detailed timescales relating to responses and appeals. These can all be extended by mutual agreement. If the request is agreed the employer must write to the employee within 28 days setting out the agreed changes and when they begin

- If the employer does not agree they must hold a meeting to discuss the request within 28 days of receiving the application – this can be extended if the relevant person is on leave when the application is submitted
- The employer must put their decision in writing within 14 days of the meeting (this can be extended if both sides agree)
- You do have the right to appeal your employer's decision. You can do this on a number of grounds, including:
 - to bring something to your employer's attention they may not have been aware of when they rejected your application (eg another member of staff is now interested in taking on the extra hours)
 - to challenge a fact your employer used in applying their business grounds for refusing your request
- Any appeal must be submitted in writing within 14 days of the date the employer gave notification of their refusal
- The employer must hold a meeting to discuss the appeal within 14 days of receiving notice that the staff member is appealing. They must agree the date with the employee
- The employer must notify their decision within 14 days of that appeal meeting
- If the appeal is refused the employee can consider submitting a grievance but first check that there has not been a misunderstanding of the procedure or facts
- Employees still have a statutory right to be accompanied by a work colleague or trade union rep at any meetings. They can speak at the meeting and confer with the employee but cannot answer questions on their behalf

For more information see www.nidirect.gov.uk and enter search term 'flexible working' or <https://tinyurl.com/l5hr39t>

You could also consider submitting a grievance if they have not followed correct procedure or stuck to the time limits.

Maternity leave cannot be extended so the employer and member will need to agree a further period of leave. This should be agreed in writing and could include any of the following: parental leave; annual leave; paid or unpaid leave.

If the employee is unable to return to work on the same hours as before her maternity leave, her employer could allow the employee to return to work on the basis requested for a trial period. If the employee is able to and decides to return to work on the same hours as before her maternity leave, she will need to be aware that this may limit her ability to claim indirect sex discrimination if her request is subsequently refused as it indicates that she is not disadvantaged by having to work her old hours. If the member decides to return to work on her old hours while a decision is made she should write to her employer stating that she is only able to continue working on her old hours temporarily while a decision is made on her flexible working request.

On what grounds can the employer refuse a request?

The employer can refuse a request but it has to be for one of the following eight business reasons:

- extra costs that will damage the business
- inability to re-organise work among existing staff
- inability to recruit additional staff
- detrimental impact on quality

- the detrimental effect on the ability to meet customer demand
- detrimental impact on performance
- insufficiency of work during the periods the employee proposes to work
- planned structural changes (eg a re-organisation)



Section 8

Building a better balance – countering the arguments

Here, we explore the reasons for refusal you may come across and how you can counteract them. The member putting in the request will be the person who best understands their job so ask them to think carefully about possible challenges and how they could be overcome.

‘It’s too expensive’

To make this argument successfully the employer will have to show that the sums add up and you may find that they have not carried out an accurate calculation of the additional costs. ACAS recommends that employers consider whether there are less obvious savings such as a reduction in overheads, better coverage of service or increased outputs.

Any additional costs may not be as high as feared – for example national insurance is no higher for a part timer because it is calculated as a percentage of salary.

Will any additional equipment be needed or can it be shared?

For job sharers there may be extra costs in terms of training or attendance at staff meetings. The benefits – such as two sets of skills and experience, views and ideas and motivated staff happy with their work-life balance – will bring improvements to service delivery that are worth this small extra cost.

There are other benefits for services such as potentially having some cover if one job sharer is off sick or on leave.

‘We are struggling to recruit to vacant posts and can’t afford to lose any more hours from the service’

ACAS recommends employers consider the cost of recruiting additional staff against the cost of losing the existing person making the request. If the employer is facing difficulties recruiting physiotherapy staff they should think about the consequences if the member decides to look elsewhere to get the work-life balance they need.

Has the employer asked existing staff if they would like to increase their hours? Are you or the member aware of any staff who may want to do this? Others may not have put in requests because they thought they would get a negative response so positively promoting flexible working may encourage others to think about making changes.

Does the employer include positive statements about flexible working in job adverts? This can open up a bigger field of candidates.

It is a good idea for stewards to keep a record of any physiotherapy staff who leave because of lack of flexible

working opportunities so you can monitor whether this is a growing problem.

ACAS recommends the employer talks to the team about any reorganisation of work where this would be appropriate before coming to a decision.

‘We won’t be able to find a job share partner’

Your employer will need to show they have made reasonable efforts to recruit inside and outside the organisation so ask them what steps they have taken to do this. They would also need to show that there would be particular difficulty in finding a job share partner, for example the job was highly skilled and it would be particularly difficult to get someone else to do the work part-time or to job share.

When preparing your case you and the member should speak to other staff to see if any of them would be interested in increasing their hours. This may be an opportunity for a lower grade member of staff to get experience at a more senior level while having the benefits of an experienced job share partner. For example, an existing member of staff, working part time as a Band 6, might want to undertake a separate job share contract with a Band 7. However, they should be very careful to maintain a separation of their two different roles.

Look carefully at the skills and potential of other employees. With training many staff can acquire new skills [ACAS]

‘I am not convinced that the new arrangement will work in the long term’

An employer can trial an arrangement for a fixed period to see if it is sustainable over the longer term [ACAS]

If the employer has doubts you can suggest that the new working arrangement is trialled for a set period after which you can meet to review how it is working and iron out any problems. Make sure this is agreed and the timescales are set out in writing.

‘Our organisation has a policy of allowing only full time or half time hours with no other options’

Check your local policy to see if it really is as inflexible as this. If it is, raise with staff side colleagues to negotiate improvements.

It may well be that a blanket policy of this kind will be considered discriminatory. As women tend to have more childcare responsibilities than men, insisting that women work long or inflexible hours can be indirect sex discrimination. The same principles could apply where women employees need flexible work because of other caring situations. Men cannot claim indirect sex discrimination for childcare reasons but if a man is refused flexible working in a situation where women doing similar jobs are allowed to work flexibly, this could be direct discrimination.

The employer needs to show that they have considered the request on an individual basis taking account of any

suggestions you have made about how this could work. It is helpful if the member can provide evidence showing how badly they will be disadvantaged by a refusal.

‘The member of staff is too senior and has management responsibilities so part time or job share working isn’t feasible and will confuse staff’

Again a blanket approach like this is not justifiable grounds for refusal. Every member of staff, whatever their grade, has to have their application considered seriously.

If a job share is managed properly then there is no reason why staff should be confused. Job sharers will be keen to show that the arrangement is working well and overcome any problems.

There will probably be examples in other areas and among other clinicians in senior posts where job sharing or part time working is successful. Speak to these staff about any problems they encountered and how they overcame them which you can quote.

‘It won’t be good for patient care’

Ask for the basis on which this statement is made. As above, there must be examples of physiotherapy staff and other clinicians working successfully in this way. There may be unexpected benefits – for example compressed hours can provide more staff cover at peak times or extra cover at lunch times. Job sharers may provide cover for at least part of the week when one partner is on leave or off sick.

The service may also benefit from the additional responsibilities that more than one part time worker can take on. In one job share partnership one physiotherapist

was a dementia champion and the other a quality assurance lead. It is unlikely that one post holder would have taken on both additional roles. Additional staff also means potentially additional cover for on-call rotas.

‘Job sharing/part-time working won’t work in rotational posts’

Job sharers can rotate together so there is no reason why this would not work successfully. Speak to the staff on rotations to see if they can identify any potential problems and how they can be overcome.

A large number of physiotherapists and physiotherapy support workers up to Band 7 are rotational so again a blanket policy excluding these staff would discriminate and exclude many unnecessarily.

Job sharers can rotate together so there is no reason why this would not work successfully. Speak to the staff on rotations to see if they can identify any potential problems and how they can be overcome.

Section 9

References and further information

CSP Information

For more information about the Building A Better Balance campaign including good practice case studies www.csp.org.uk/buildingabetterbalance

The following ERUS information papers are available on the CSP website www.csp.org.uk

- Maternity Leave and Pay ERUS IP 08
- Parental Leave – ERUS IP 16
- Paternity Leave and Pay – ERUS IP 29
- Adoption Leave and Pay – ERUS IP 30
- Part Timers' Rights – ERUS IP 15

UK Information (excluding Northern Ireland)

ACAS website: www.acas.org.uk

- ACAS Code of Practice 5: Handling in a reasonable manner requests to work flexibly, June 2014
- The right to request flexible working: an ACAS guide, June 2014
- Flexible working and work-life balance, ACAS, June 2015

Government guide to flexible working rights www.gov.uk/flexible-working/overview

Northern Ireland

Government regulations and guidance can be found at www.nidirect.gov.uk

or here <https://tinyurl.com/l5hr39t>

Advice to employers from Invest Northern Ireland on behalf of the Northern Ireland Executive www.nibusinessinfo.co.uk/flexibleworking

Labour Relations Agency guidance on flexible working www.lra.org.uk or use this link <https://tinyurl.com/l8z52qv>

Other sources of information and advice

NHS terms and conditions handbook
www.nhsemployers.org/tchandbook

Maternity Action – campaigns for the rights of mothers and new parents and supported CSP in the production of this pack www.maternityaction.org.uk

New Ways of Working – supports and gives a voice to working parents and carers, whilst also helping employers create workplaces which encourage work/life balance for everyone www.workingfamilies.org.uk

TUC flexible working resources
www.tuc.org.uk/flexible-working-parents

Checklist for CSP members going on maternity leave

This checklist is primarily designed for CSP stewards to hand out to any members going on maternity leave but will also be useful for other members wishing to change their working arrangements. It briefly outlines their right to request flexible working, should they wish to change their working hours or pattern. Copies can be downloaded from the CSP website www.csp.org.uk/buildingabetterbalance

Flexible working allows employees to combine family, caring or other responsibilities and interests with their working life resulting in a better balance between the two.

Checklist for CSP members going on maternity leave

Flexible working allows employees to combine family, caring or other responsibilities and interests with their working life resulting in a better balance between the two. It reduces stress levels and sickness absence while increasing productivity and job satisfaction which lead to better quality patient care and outcomes. For employers it can improve recruitment and retention – particularly at a time when pay increases are low.

The right to request flexible working is enshrined in law. Your employer must consider your request seriously and give you a clear explanation if they feel it cannot be agreed.

Your CSP steward can support you in making a request so do approach them for help as early as possible. The whole process can take at least three months so prepare well in advance.

For more detailed guidance on how to make a request and negotiate changes, see the CSP flexible working information pack

www.csp.org.uk/buildingabetterbalance

Here are some important points to be aware of.

How to apply

- Check that you qualify for the statutory right to request. You must have been employed by your current employer for at least 26 weeks when you make the request.
- If you don't qualify for this right you can still ask your employer to consider your request – they can choose to agree it anyway.
- Does your employer have their own flexible working policy? It may be better than the statutory minimum provisions so check the details.
- Make sure you allow plenty of time for your request to be dealt with. The employer has up to three months (or longer if you both agree) to provide a decision so raise the issue as soon as possible, especially if you have childcare arrangements to set up.
- You can only make one formal request in any 12 month period (unless your employer agrees otherwise). So it is usually worth making an informal approach to your manager first. You may be able to agree a new working arrangement without using the formal procedure – but make sure any changes are put in writing and your employment contract is suitably amended.
- Does your employer have a template form for you to complete? If not, use the government application form FW(A) <https://tinyurl.com/m4lkpwj>. In Northern Ireland go to <https://tinyurl.com/15hr39t> for guidance.
- Keep copies of all correspondence and notes of any meetings or conversations.

Preparing your case

- Remember that the right to request is just that... your employer does not have to agree it but must seriously consider it. Be prepared to negotiate and decide how flexible you can be.
- Are you aware of the impact any changes will have on you? A reduction in hours will mean a reduction in your pay, annual leave and pension.
- Do you want any changes to be temporary or permanent? Employers will usually assume they will be permanent, so if not be clear how long you want the new arrangements to last.
- It is up to you, with your CSP steward's help, to think through how the new arrangement might work and how any problems can be overcome. Talk to colleagues to get their input. They may want to change their hours, taking on extra or reducing their own hours thus freeing up funding to create a new post.
- Be aware that if you don't attend any meeting (or subsequent re-arranged meeting) with the employer to discuss your request without good reason the employer can treat the request as having been withdrawn. They can refuse to allow you to submit another request for 12 months. If you can't make a meeting – if you are ill or have a family or childcare emergency – make sure the employer confirms in writing that they agree you had good reason to miss it.

Your request is agreed

- If your employer agrees to your request you need to get the changes confirmed in writing. If they are temporary be clear when this will start and end. If for a trial period agree a review date and who will be involved in the review.

Your employer has doubts

- Your employer must consider your request seriously so they should arrange to meet with you and your steward to talk through any concerns and how they can be overcome. They should also talk to other staff about how the changes could work.
- If your employer still has concerns suggest a trial period to iron out any problems and show how the new arrangement can work successfully.
- If your employer refuses your request they must give you their reasons in writing. Their refusal must be based on at least one of eight specified business reasons and they must explain why they apply in your case.
- You can appeal against this decision – see the CSP flexible working information pack for more advice on common reasons for refusal and advice on how to negotiate an arrangement that suits both of you. Check your local policy for any time limits that may apply.

- Ultimately you may have recourse to an employment tribunal but strict rules and timescales apply. You will need to speak to your CSP steward who can get further advice from their CSP Senior Negotiating Officer. If you do not have a steward contact the CSP Enquiries Team 0207 306 6666.
- If your maternity leave is coming to an end and you still have not reached agreement you can ask your employer for a further period of parental, unpaid or annual leave. Write to your employer to remind them of the urgent need to resolve the situation. If they have not followed procedures or time limits speak to your steward about submitting a grievance.



If your employer agrees to your request you need to get the changes confirmed in writing. If they are temporary be clear when this will start and end.

Negotiating and improving your local policy – a checklist for stewards

Guidance on statutory rights and procedures and best practice when dealing with requests are provided by ACAS (England, Scotland & Wales) and the Labour Relations Agency (Northern Ireland). But there is nothing to stop you trying to negotiate as supportive a local policy as possible with tighter timescales and greater commitment to encouraging flexible working at all levels in your organisation.

Communicating the policy

Are staff aware of the flexible working policy and how to apply for changes to their working patterns?

Are there plans in place for regular communications with staff promoting the flexible working policy? This could include successful case studies across a range of staff groups and grades. Think about using as many different channels as possible including staff newsletters, staff/CSP member meetings, wages slips and noticeboards.

Policy checklist

Could your local policy be improved? Check when it was last updated. Talk to staff side colleagues and ask to review it via your joint negotiating forum.

Encouraging applications

- Does the policy set out the range of flexible working arrangements that will be considered with an explanation of each one (eg annualised hours, compressed hours, flexitime, job sharing, part time and term time working)?
- Does the policy state that any member of staff can submit a flexible working request from day one – rather than the statutory requirement of 26 weeks' service?
- Can an employee submit more than one request each year – especially if their first request was refused or withdrawn?
- Is there clear information about how employees should make an application – who the application is sent to and details of what information should be included in it?
- Does your employer have a template for staff to complete – this could avoid requests having to be returned by managers asking for missing information?
- Does it include a strong commitment to flexible working at all levels in the organisation recognising the benefits for staff, managers and patients? Is the statement at least as positive as Sections 34.8 and 15.38 of the NHS terms and conditions handbook?
- Is there a clear commitment that the employer will consider the request positively and only reject it if it really is unworkable?

- Does it allow for trial periods if the manager has concerns so that the employee has the opportunity to show how the new arrangement can work? Make sure a clear procedure for reviewing the trial period is included.

Improving the process

- Is there a right for the employee to be accompanied at any meetings (eg by a trade union representative or colleague)?
- What are the time limits set out in the policy for each step of the process? The ACAS guidance says any request should be dealt with within three months of receipt but tighter timescales apply in Northern Ireland. Is there a set time limit for holding a meeting to discuss the request or to approve it (eg 28 days)?
- Review the time limits for further stages in the process. For example, 14 day time limits for providing a written decision following the initial meeting; for subsequent meetings; and for submitting and responding to appeals.
- Good policies will include flexibility to extend any of the time limits by mutual agreement as this may allow time to get further information or consult with colleagues on how the new working arrangement could be implemented successfully.
- What arrangements there are for appeals? Make sure that there is a right to appeal and to representation at any hearing.

Monitoring and reviewing the impact

- Is there a clear statement that staff who work, or request to work, under flexible working arrangements, will not suffer victimisation or unfair treatment because of this?
- Has the employer carried out an equality impact assessment of the new or revised policy?
- Is there a commitment to monitor take up and refusal of requests to ensure the policy is being applied fairly to all staff regardless of service or job grade?
- Applications and outcomes should be recorded and kept for a minimum of one year.
- Monitoring information should be made available and discussed at your joint negotiating forum to see if further improvements to the policy and procedures are needed and to check that they are being applied fairly and consistently to all staff. See para 34.12 of the NHS Terms and Conditions Handbook www.nhsemployers.org/tchandbook





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