

HR104s
April 2024
UNCLASSIFIED



Schools' Flexible Working Policy

The Right to Request and the Duty to Consider

A Guide for Governing Bodies, Head Teachers and Employees

This Policy has been formally adopted by the Governing Body of

Cape Primary School on 05/03/24

Table of Contents

Item		Page
1	Introduction	3
2	Scope	3
3	Definitions	3
4	Employees' Rights and Responsibilities	4
5	Head Teachers' Rights and Responsibilities	4
6	Eligibility	4
7	Types of Flexible Working	5
8	Making an Application	5
9	Considering an Application	6
10	Stage 1 – Meeting with Head Teacher	6
11	Stage 2 - Meeting with Appeals Committee	7
12	Exceptions to the Procedure and Withdrawals	8
13	Flexible Working Flowchart	10
14	Procedure for Appeals Committee	11

1. Introduction

1.1 Any employee can request to work flexibly.

All employers have a legal duty to protect the health, safety and welfare of their staff. This includes minimising the risk of stress-related illness. A clear flexible working policy can form an important part of this duty, especially when integrated with broader staff wellbeing policies.

This policy aims to encourage schools to consider flexible working arrangements to support its employees achieve a better balance between work and their other priorities, such as caring responsibilities, leisure activities, further learning and other interests. Schools are committed to agreeing any flexible working arrangements, provided that the needs and objectives of both the organisation and the employee can be met.

This document provides guidelines for head teachers, governing bodies and employees on the right to request and the duty to consider flexible working under the statutory right.

2. Scope

2.1 This policy applies to all school-based employees including head teachers.

3. Definitions

- (a) **Representative:** an employee is entitled to be accompanied at each Formal Stage i.e. by a recognised trade union representative or work colleague if they so wish.
- (b) **Appeals Committee:** means the Committee consisting of a minimum of 3. Members of the Appeals Committee should have had no prior involvement in the case.

4. Employees' Rights and Responsibilities

- To be able to apply to work flexibly.
- To have their application considered properly in accordance with the set procedure and refused only where there is a clear service implication for doing so.
- To ensure their application is valid by checking that all the eligibility criteria are met and that they have provided all the necessary information.
- To ensure the application is made well in advance of when they want it to take effect.
- To have a Trade Union Representative or a work colleague when meeting the Head Teacher to discuss the application.
- To arrive at meetings on time and to be prepared to discuss their application in an open and constructive manner.
- If necessary, be prepared to be flexible themselves to reach an agreement with the Head Teacher.
- Where an application is refused to have a written explanation.
- To appeal against the Head Teacher's decision to refuse an application.

5. Headteachers' Rights and Responsibilities

- To reject an application when the desired working pattern cannot be accommodated within the needs of the school.
- To seek the employee's agreement to extend timescales where it is appropriate.
- To consider an application withdrawn in certain circumstances.
- To consider requests properly in accordance with the set procedure.
- To ensure they adhere to the time limits contained within the procedure.
- To provide the employee with appropriate support and information during the application.
- To only decline a request where there is a recognised service implication and to explain to the employee in writing why it applies.
- To ensure that any variation with the procedure is agreed in advance with the employee and recorded in writing.

6. Eligibility

To make an application under the statutory right the employee will have to meet certain criteria. This section explains those criteria and the types of flexible working for which an employee might apply. An employee who does not meet the criteria will not be able to make a request under the statutory right.

6.1 Eligibility Checklist

To be eligible to make a request under this right, a person must:

- Be an employee.
- Not have made 2 applications to work flexibly under the right during the past 12 months.

7. Types of Flexible Working

There is scope to apply for a wide variety of different types of working pattern. Eligible employees can request to:

- Change the hours they work;
- Change the times when they are required to work;
- Change the days when they are required to work; or
- Work from home or from another location (whether for all or part of the week).

A request may be as simple as asking to start half an hour later than usual to allow the employee to drop their child off at school, or it may be a bigger change to their hours.

Flexible working incorporates a wide variety of working practices. A flexible working arrangement can be any working pattern other than the normal working pattern. Most people are familiar with working part-time for pro-rated pay or working different shift patterns.

8. Making an Application

An employee's application should set out their desired working pattern in an initial application to the Head Teacher well in advance of when the change will take effect.

8.1 Application Checklist

An application under the statutory procedure must:

- Be in writing.
- State the application is being made under the statutory right to request a flexible working pattern.
- Specify the flexible working pattern applied.
- State the date on which it is proposed the change should become effective.
- State whether a previous application has been made to their Head Teacher and, if so when it was made.
- Be dated.

8.2 Will the change of working pattern be permanent?

Any request that is made and accepted under the statutory right will normally be a **permanent** change to the employee's contractual terms and conditions. The employee has no right to revert to the previous working pattern (unless otherwise agreed). So, for example, if an employee's new flexible working pattern involves working reduced hours, he or she has no right to revert to working the hours he or she previously worked, although this is not to say that a Head Teacher will automatically reject a subsequent request to do so.

9. Considering an Application

The right places a legal duty on Head Teachers to consider all applications and establish whether the desired work pattern can be accommodated within the needs of the school.

The Head Teacher should consider each application objectively on this basis, and not attempt to judge whether one applicant's need for flexible working is greater than another's. The Head Teacher should not discriminate on any protected characteristic under the Equality Act 2010.

It may be possible for the Head Teacher to agree to a request to work flexibly simply on the basis of the application itself and, if so, he/she should write to the employee within 21 days, specifying the contract variation agreed to and the start date.

If the application is refused the Head Teacher must be able to demonstrate by using one of the following criteria why the request cannot be accommodated:

- There will be a detrimental effect on our ability to meet the school/pupil needs.
- There will be a detrimental impact on the quality of service and performance.
- The extra costs which will damage the school.
- The school would be unable to recruit additional staff to cover.
- The work can't be reorganised among other staff.
- There's a lack of work to do during the proposed working time.
- The business is planning changes to the workforce.

10. Stage 1 - Meeting with Head Teacher

- A Head Teacher must hold a meeting to consider the request within 14 calendar days after the date an application is received.
- An employee can, if they wish, have a Trade Union representative or Work Colleague present.
- The Head Teacher must write to the employee informing them of their decision within 7 calendar days after the date of the meeting.

10.1 What happens at the meeting

Experience shows that the best way for both parties to understand each other's position and identify a solution that suits them both is to hold a face-to-face meeting to discuss the request. The legislation requires the Head Teacher to arrange a meeting with the employee. The meeting should take place within 14 calendar days after the application has been made. The meeting will provide both parties with the opportunity to discuss the desired work pattern in depth and consider how it might be accommodated. Both the Head Teacher and the employee should themselves be prepared to be flexible. If the original working pattern cannot be accommodated, the meeting also provides an opportunity to see if an alternative working arrangement may be appropriate. It may also be in the Head Teacher's and employee's interests to agree that the new working pattern will take place for an agreed trial period for, say, 12 weeks in order to see how it would suit them both.

In this case, the parties could agree to extend the time for a final decision to be given by the Head Teacher until the end of the trial period. To do so the Head Teacher should specify the period of extension and its end date in writing (dated) to the employee. The Head Teacher's final decision can then be given once they have tried out the new pattern. In some circumstances, the Head Teacher and employee may conclude that a permanent change to the latter's contract of employment is not the best solution: this might be the case, for example, where an employee is going to be caring for an adult who has a terminal illness or a fluctuating condition. A solution here might be an informal agreement between the Head Teacher and employee – outside the legislative framework – to flexible working for a limited period.

However informal the arrangement is, it is advisable to have it agreed in writing so that both employee and Head Teacher are clear about start and end dates, etc.

Alternatively, the employee and Head Teacher might agree under the formal procedure to a time – limited change after which the employee would revert back to the original working pattern.

11. Stage 2 - Appeal to the Appeals Committee

- An employee has 14 calendar days to appeal in writing after the date of notification of the Head Teacher's decision.
- An employee can appeal to the schools Appeals Committee, and the appeal must be arranged within 14 calendar days after receiving notice.
- The employee can be accompanied by a Trade Union Representative or Work Colleague.

- The Appeals Committee must inform the employee of the outcome of the appeal in writing within 7 calendar days after the date of the meeting.

An employee must make their appeal in writing within 14 calendar days after the date they receive written notice that their request has been rejected. When appealing against a refused request an employee will have to set out the grounds for making the appeal and ensure that it is dated.

There are no constraints on the grounds under which an employee can appeal. It may be that they wish to bring to the attention something the Head Teacher may not have been aware of when they rejected the application, e.g., that another employee is now willing to cover the hours the applicant no longer wishes to work; or it may be to challenge a fact the Head Teacher has quoted to explain why the reason applies.

If the appeal is upheld the written decision must:

- Include a description of the new working pattern.
- State the date from which the new working pattern is to take effect.
- Be dated.

If the appeal is dismissed the written decision must:

- State the grounds for the decision. These will be appropriate to the employee's own grounds for making the appeal.
- Provide an explanation as to why the grounds for refusal apply in the circumstances.
- The same principles apply as to what is a sufficient level of explanation at appeal as the amount of explanation that should be given following the initial decision.
- Be dated.

A written notice of the appeal outcome constitutes the Appeal Committees' final decision and is effectively the end of the formal procedure within the workplace.

12. Exceptions to the Procedure and Withdrawals

In the majority of cases, requests for flexible working will follow the procedure as laid out in the previous sections. However, there will be occasions where it is necessary to deviate from this to help reach a suitable outcome. This section outlines the potential exceptions to the procedure and when an application may be taken as withdrawn. In all circumstances, it is essential that a written record is made.

12.1 Extension of time limits

Through agreement by the Head Teacher and the employee.

There will be exceptional occasions when it is not possible to complete a particular part of the procedure within the specified time limit. For example, it might be that the employer requires extra time to speak to another employee who is on holiday, about whether they could work the hours left uncovered by the employee's requested working pattern; or the employee themselves may be going on leave and as such will not be able to attend a meeting within the time limit. Such extensions of time limits can only take place if they are agreed by both the Head Teacher and the employee. The Head Teacher must make a written record of the agreement.

The written record of the agreement must:

- Specify what period the extension relates to.
- Specify the date on which the extension is to end.
- Be dated.
- Sent to the employee.

12.2 When can an application be treated as withdrawn?

There will also be occasions when an application is treated as withdrawn. In all circumstances, a written record must be made.

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

12.3 The employee decides to withdraw the application

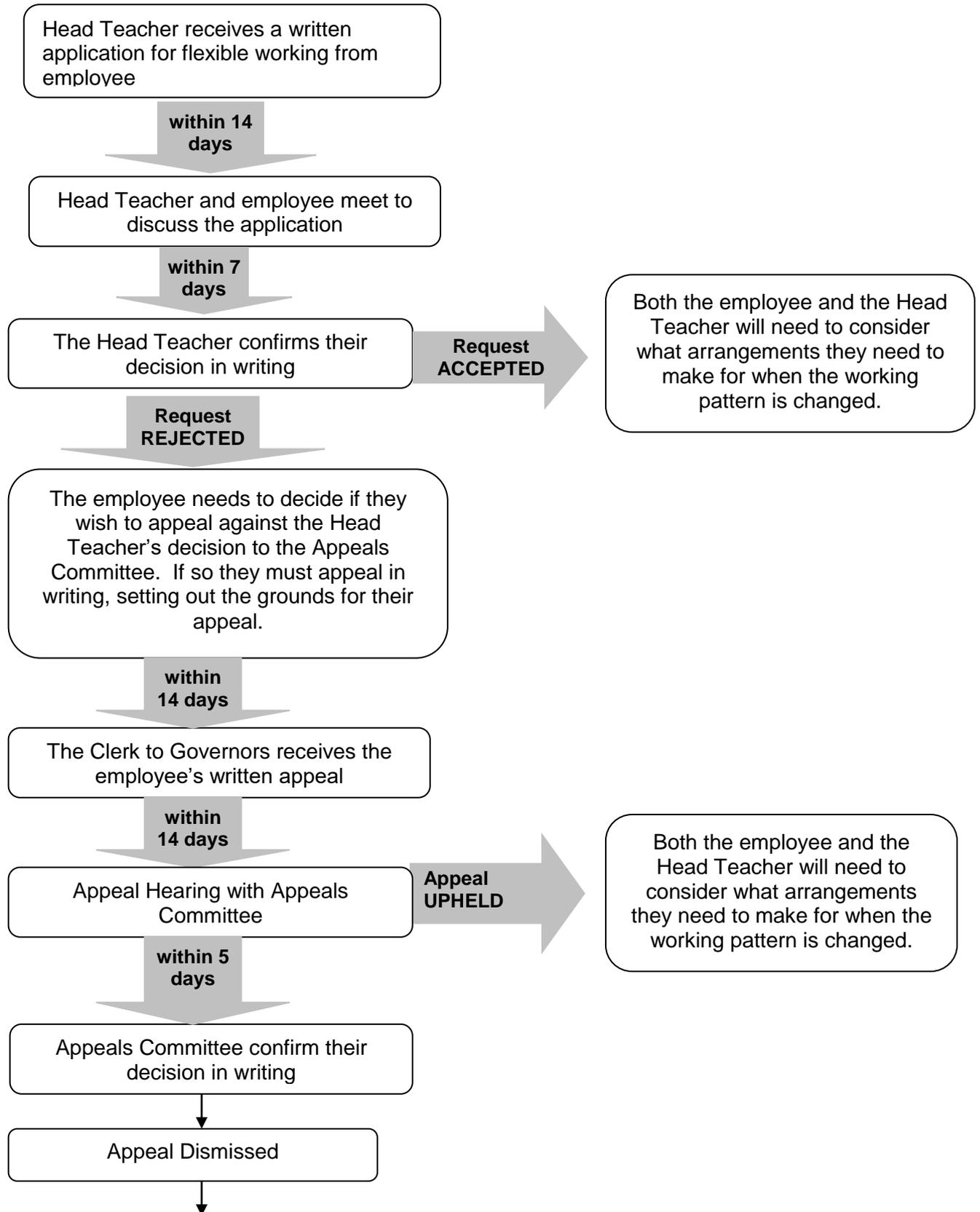
A Head Teacher who is informed verbally that the application is withdrawn by the employee and does not subsequently receive written confirmation should contact the employee to confirm their intentions. Where the Head Teacher does not receive confirmation from the employee, the Head Teacher should confirm the withdrawal in writing.

12.4 The employee fails to attend two meetings

In cases where employee misses two meetings without reasonable cause, the Head Teacher may treat the application as withdrawn. It is therefore in the employee's best interests to inform their Head Teacher as soon as possible if and why they are not able to attend a meeting. For example, if an employee misses a meeting for a reason such as their child falling ill and informs the Head Teacher straight away, the Head Teacher should treat this sympathetically. However, if an employee simply misses a meeting and does not explain why, then they can expect their absence to be treated less sympathetically. The Head Teacher 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.

13. Flexible Working Flowchart



No further right of appeal

14. Stage 2 – Meeting with Appeals Committee

- a) The employee must put in writing his/her reason for being dissatisfied with the decision taken by the Head Teacher.
- b) If such a request is made, the Clerk to Governors will arrange a meeting of the Appeals Committee within 14 days of receipt of the request and prepare a written response for presentation to the Appeals Committee.
- c) The Head Teacher and the employee (and/or representative as appropriate) may make oral representations to the Appeals Committee. The Appeals Committee may receive oral representations from other parties where they deem this to be appropriate.
- d) Before the Appeals Committee considers their decision, the Head Teacher and the employee (and/or representative) should withdraw.
- e) The Appeals Committee of the Governing Body should consider the Head Teacher written response, any written statements and any oral representations made to them before coming to a decision.
- f) The Appeals Committee should consider the appeal and inform both parties verbally if possible on the day of the meeting and followed in writing of the outcome and of any recommendations made within 5 working days.
- g) The decision of the Appeals Committee is final and exhausts the process.

Reviewed on	Reviewed by	Completed