



Bar Council Equality & Diversity Guides Flexible Working

This document:

- **Suggests reasons why the Bar should collectively engage with flexible working and recognise it as a benefit for chambers as a whole;**
- **provides a guide for chambers as to what a flexible working policy should cover; and**
- **includes a draft model flexible working policy.**

Introduction

With continued financial pressure on many practice areas of the self-employed Bar, flexible working is rapidly emerging as one of the more difficult issues for chambers to manage fairly. The Bar Council has prepared this guide to assist those responsible for developing and implementing flexible working policies.

Why it is important to support those who need to work flexibly at the self-employed Bar

One of the advantages of being a self-employed barrister is the ability to work as and when you wish. In 'theory' this flexibility over work should enable those with caring responsibilities or poor health to maintain their career at the Bar; the reality is that it is often not so easy.

Many chambers, under financial pressure, require certainty over income generated through rent and expenses. Chambers/clerks also need barristers who are available to cover 5 day trials, often in far flung parts of the country.

This can make it difficult (particularly for those in publicly funded practice) to work flexibly. The impact of flexible working on income also acts as a barrier where barristers are required to make a 'minimum' or 'flat rate' rent contribution. The perception that some members of chambers are contributing more than others can impact on both relationships and the power balance within chambers, often with negative consequences for those who need to work fewer hours.

To avoid uncertainty and maintain good relationships internally, the Bar Council believes it is essential that any modern and forward thinking set of chambers has a formal, clearly drafted flexible working policy.

The Business Case for Flexible Working

The case for flexible working is the same as the case for parental leave. The Bar needs to retain talent and some accommodation for those who need to work flexibly for a period to meet their personal needs can make financial sense as well as being the right thing to do.

TIP:

Develop an 'economic' case for any flexible working policy/proposal. How much does it cost to train a member of chambers – in other words: what are the financial benefits of retaining members of chambers? What would it cost to provide additional support to members of chambers working flexibly? What is the financial impact on individual members of chambers? Having a clear idea of the actual costs associated with your flexible working policy will help you to build support and to challenge those who may argue that the costs outweigh benefits.

BSB RULE REQUIREMENTS

Chambers are required by the BSB Handbook rules to have a flexible working policy. rC.110.3(1), requires that:

"...chambers has a flexible working policy which covers the right of a member of chambers or employee to take a career break, to work part-time, to work flexible hours or to work from home so as to enable them to manage their family responsibilities or disability without giving up work."

The BSB does not currently provide any sample policy for chambers. It does however provide guidance worth looking at in its Handbook Equality Rules here:

https://www.barstandardsboard.org.uk/media/1596730/bsb_equality_rules_handbook_june_2014.pdf

What is a Flexible Working Policy?

A flexible working policy is a document setting out in clear terms the circumstances under which a tenant may work flexibly and if they may be entitled to some form of rent/expenses relief; and the form that rent/expenses relief will take.

What should a flexible working policy contain?

As a very minimum, a flexible working policy should contain in clear terms the following:

- A clear description of the provisions that will be made if a tenant wishes to work flexibly

- If there is a formal policy under which tenants will be entitled to rent reductions or increases, depending on chambers' arrangements for calculating rent, or where other concessions are made to those who wish to work flexibly –
 - Who¹ can apply under the flexible working policy;
 - To whom the tenant should apply for flexible working and when;
 - How long a tenant can work under agreed flexible working arrangements (up to a stated maximum, in line with the eligibility criteria for the policy) and/or how regularly their arrangements will be reviewed for a longer extended period of flexible working;
 - What rent reductions or increases, depending on chambers' arrangements for calculating rent, will the tenant be entitled to;
- The tenant's responsibilities to chambers during any period of flexible working;
- Chambers' responsibilities to the tenant during any period of flexible working;
- How chambers will deal with grievances under the policy, and how it will review the effectiveness of the policy.

TIPS:

- Consult members of chambers on what they would like to see in any flexible working policy.
- Build support for your policy before you take any proposal to your management committee (identify key opinion formers and ensure they support your proposals).
- Consult widely with tenants before finalising your flexible working policy or before drafting amendments to an existing flexible working policy (either in a chambers meeting or via an email ballot). This will afford tenants an opportunity to comment on any proposals and air any concerns. Such a consultation, as well as providing potentially useful information for those who will be engaged in drafting the flexible working policy, may well go some way to ensuring acceptance of the flexible working policy and its ethos throughout chambers. The new flexible working policy or any final amendments to the policy should be incorporated into chambers' constitution.
- It may assist as part of the consultation to establish how often the policy is used and how long individuals have to work flexibly (on average). This can help build the financial case for the policy and dispel some of the myths that can exist regarding the cost to chambers.

¹ This is particularly important as you may wish to only formally offer flexible working to those who meet specific criteria e.g. caring responsibilities, ill-health on the basis that 'in theory' all self-employed barristers can work flexibly. Consideration should also be given to pupils as well as tenants.

REMINDER:

Your chambers' constitution may need to be amended to reflect your flexible working policy.

RENT OPTIONS:

Some chambers may opt to have a flexible working policy that provides for a reduction in rent/expenses. However chambers all have very different rent/expenses structures and percentages can be calculated on a very different basis (some use a straight percentage whilst others take an average over a period). For this reason it is not possible for this Guide to give detailed examples of how such provisions may be structured in the sample policy.

We have outlined the most common forms of rent arrangements (below) with suggestions on what you might offer in your policy. Those with more complex rent arrangements may wish to consider adapting the suggestions below:

Rent Structure	Suggestions for Adaptions
Flat rate rent only	➤ Reduce flat rate rent
Percentage (%) only	➤ Consider whether to maintain, reduce or increase percentage (based on other elements of the fee structure)
Flat rate rent + Percentage (%)	➤ Reduce or extinguish flat rate rent and increase percentage contribution
Rent/expenses calculate on previous earnings e.g. over the last 1-3 years	➤ Recalculate using the proportion of days each week that the tenant is in fact working

Sample Scenario:

Members of chambers pay expenses partially on a flat rate and partially on a percentage rate: the flat rate effectively accounts for the first £75,000pa of earnings; the percentage rate element starts at 10% for income over £75,000pa, and at reducing percentages for higher earnings thereafter. Chambers has decided that upon making a successful application to do so, those working flexibly for reasons of disability or caring responsibilities can switch to paying a nominal fixed rate payment plus a higher percentage charge of 18%.

WARNING:

Your policy should also outline implications of any rent reductions on rooms (will hot desking be expected); library subscriptions etc.

FAQs:

- Q:** *What do I do about those who are not 'formally' working flexibly via the policy but who effectively choose not work in the school holidays. They now want a rent reduction in line with those who are 'formally' working under our policy?*
- A:** An appropriate response might be that the tenant should not be entitled to this reduction unless s/he had made the application in advance and it had been approved. Any reductions to rent or expenses can potentially be complex and cause friction in chambers due to the fact that the reduction could affect both the budget and other tenants' contributions. Tenants should bear this in mind when making their requests.
- Q:** *We don't have enough members willing to work on a Friday, as they all want to work Mon-Thurs?*
- A:** Suggestions could be made that they work on Fridays on a rotational basis, or perhaps the virtues of having a three day Saturday – Monday weekend can be extolled. The EDO and Head of Chambers could together make a joint approach to all members concerned stating that the stance they have adopted risks the stability of chambers if they insist on these working arrangements their chambers expenses will rise as a consequence of the likely reduction in chambers turnover.
- Q:** *What do we do about those who wish to work a three day week, but want to keep their room? It seems others are subsidising them – the rent still has to be paid.*
- A:** Unless the tenant can reach a room sharing arrangement with another tenant they should have to pay full room rent if that is how chambers' expenses are structured. The logic is that the percentage/flat rate expenses are often linked to costs that are only used when the tenant is working e.g. clerking, use of phone etc., so if fewer days are worked those costs reduce accordingly but the tenant's use of a room does not reduce, because no one else can use it and their belongings are still in the room. So the charge for use of that facility should not be reduced.

Appendix 1:



SAMPLE FLEXIBLE WORKING POLICY

Introduction

- 1.0 This Policy has been produced in accordance with the Bar Code of Conduct C.110.3 (1), which requires that -

“...chambers has a flexible working policy which covers the right of a member of chambers or employee to take a career break, to work part-time, to work flexible hours or to work from home so as to enable them to manage their family responsibilities or disability without giving up work.”

This Policy has been written as a guide to how chambers will deal with members who wish to work flexibly for any of the above reasons, or for reasons of long term illness *[or sabbatical]*. Employees should refer to their contracts and any staff policies for the different provisions that apply to them, rather than this Policy.

- 1.1 All members of chambers as self-employed individuals are able to set their own working patterns, subject firstly to their obligations under chambers' *[Constitution/Rules]* to pay their chambers' *[expenses and/or rent]*, unless specific provision is made in the *[Constitution/Rules]* for any reduction or modification of those expenses; and secondly, regardless of the ability to work flexibly, all members of chambers shall devote such time to their practice as shall be reasonably necessary to ensure that they provide proper professional services to lay and professional clients of their own or of chambers.
- 1.2 Chambers endeavours to work within the relevant statutory, regulatory and professional frameworks in relation to equality and diversity, and recognises that those with certain protected characteristics e.g. those with disabilities; those with caring responsibilities; and those in older age groups, are afforded protection from various types of discrimination in relation to flexible working and reasonable adjustments under equalities legislation.

[If a power of waiver or reduction of expenses in exceptional circumstances is included in the Constitution/Rules]

- 1.3 This Policy is subject to chambers *[Management Committee]*'s absolute discretion in relation to chambers' expenses as set out in paragraph *[X]* of the *[Constitution/Rules]*:

[...]

- 1.4 This Policy is made available and drawn to the attention of all members of chambers, clerks and staff, all of whom are required to:
- i. Read and understand this Policy; and
 - ii. Understand their role in relation to this Policy.
- 1.5 This Policy will be reviewed by chambers' Equality and Diversity Officer[s] every two years, who will report to *[Chambers Management Committee]* on its effectiveness and make recommendations as required.

Areas Covered by this Policy

- 2.0 This Policy will deal with -
- i) General Guidelines with regard to flexible working
 - ii) Procedure and Guidelines for working flexibly *[and/or in relation to any provisions in the Constitution or Rules relating to alterations to Chambers' expenses for flexible working; disability or illness; etc.]*
 - iii) Complaints and review

General Guidelines on Flexible Working

- 3.0 Chambers recognises that, from time to time, members may decide they want to work more flexibly than is customary in full-time self-employed practice at the Bar, so as to enable them to manage childcare, family or other responsibilities, or to manage the effects of any ill-health or disability that they or a family member may have, alongside the continuation of their practice. Generally, such arrangements are a matter of the member's individual choice in accordance with 1.1 above.
- 3.1 These general guidelines apply to all members of chambers working flexibly whether or not they have applied to go on to one of the alternative charging structures under the *[Constitution/Rules]*.
- 3.2 In order to ensure that members working flexibly are not being discriminated against on any of the protected grounds under the Equality Act 2010 and for reasons of good practice management, they are encouraged to discuss with their *[Senior Clerk]* their wish to work flexibly and to discuss the ongoing arrangements in their practice reviews (see 3.6(i) below). They are also encouraged to declare that they are working flexibly when information is being gathered for the purposes of chambers' collection of diversity information for the purposes of the Bar Standards Board's Handbook E&D monitoring provisions.
- 3.3 Chambers recognises that it is in its long-term interests to retain all members, including those who work flexibly, in whose practices it has invested time and money and that accommodating and actively managing flexible working

arrangements is likely to aid long-term retention of such members in chambers and in practice at the Bar.

3.4 Chambers shall encourage its clerks to undertake training in relation to flexible working, *[and will appoint a member of the [administrative staff or EDO] to act as Flexible Working Representative ("FWR") who will monitor (numbers/types of flexible working arrangements) and act as a source of information on flexible working for members, and a source of guidance and information for clerks in relation to their responsibilities under this Policy.]*²

3.5 Chambers will ensure that a member working flexibly for whatever reason is:-

- i) Invited to training events, social occasions, marketing events and chambers meetings;
- ii) Informed about and consulted on any significant issues affecting their practice and the practice of chambers.

3.6 The following guidelines should be followed by members and chambers (through the members' clerking team):

- i) When the member decides they wish to work flexibly, they should meet with their Senior Clerk prior to starting flexible working to discuss the following: -
 - a) the reason that they wish to work flexibly (if appropriate);
 - b) the hours and days that they wish to work, where the member intends to be based (home or chambers);
 - c) any geographical limitations the member would like to be placed on work allocated to them;
 - d) how their proposed days and hours of work are likely to affect the other members of their practice group;
 - e) how the member wishes their flexible working to be referred to in conversations with clients and other members of chambers;
 - f) what arrangements the member is going to make to ensure good communications are maintained with the clerks and with solicitors;
 - g) logistical issues (pigeon-hole contents; IT; couriers; payment of cheques etc.)
- [ii) *Upon starting to work flexibly, the member shall be informed who the FWR is, and be offered the opportunity to meet with them if they so wish.*
- iii) A review meeting will take place between four and six weeks after the start of the flexible working at which the member and Senior Clerk *[and the FWR if the member requests their attendance]*. Points i)(a)-(g) above will be

² This option provides that at least one member of chambers' staff or an EDO will become fully conversant with the BSB Code of Conduct and be in a position to assist the clerks and members working flexibly ensure that the working arrangements runs smoothly.

considered to see if the arrangements made are working in practice, and adjusted if necessary.

- iv) In the members' subsequent Practice Reviews, the Senior Clerk or other clerk carrying out the Review will consider and discuss with the member, in addition to the other elements of the Practice Review:
 - a) points i)(a)-(g) above and how well the arrangements are working in practice, and if they need amendment;
 - b) the information on the monitoring of allocation of unassigned work in relation to the member.
- v) If the period of flexible working involves a period where the member ceases undertake any work at all for a period (e.g. sabbatical, illness), chambers, through the members' clerking team will ensure that the member returning to practice is assisted in the re-establishment of their practice.

4.0 *[Set out here any rules relating to the requirements for applying for more formal flexible working arrangements or alterations to chambers' charging structures]*

Complaints and Other Information

- 5.0 Any member of chambers who wishes to make a complaint about the application of this Policy or any other matter in respect of flexible working should in the first instance contact one of the chambers' Equality and Diversity Officers *[you might name the EDO(s) for convenience]* who will endeavour to resolve the complaint informally. If such attempt at a resolution fails, a grievance can be pursued under Chambers' Internal Grievance Procedure.
- 5.1 Members who have a disability should also have reference to chambers' Reasonable Adjustments Policy if necessary, and the government's Access to Work scheme, which provides equipment and assistance to disabled individuals who may need additional equipment to be supplied to remove a disadvantage they suffer in the workplace.

Review

- 5.2 This Policy will be reviewed two years from the date of its implementation and every two years thereafter