



## **Bar Council response to the Department for Business and Trade Consultation on improving access to flexible working**

1. This is the response of the General Council of the Bar of England and Wales (the Bar Council) to the Department for Business and Trade Consultation on improving access to flexible working.<sup>1</sup>
  
2. The Bar Council is the voice of the barrister profession in England and Wales. Our nearly 18,000 members – self-employed and employed barristers – make up a united Bar that aims to be strong, inclusive, independent and influential. As well as championing the rule of law and access to justice, we lead, represent and support the Bar in the public interest through:
  - Providing advice, guidance, services, training and events for our members to support career development and help maintain the highest standards of ethics and conduct
  - Inspiring and supporting the next generation of barristers from all backgrounds
  - Working to enhance diversity and inclusion at the Bar
  - Encouraging a positive culture where wellbeing is prioritised and people can thrive in their careers
  - Drawing on our members' expertise to influence policy and legislation that relates to the justice system and the rule of law
  - Sharing barristers' vital contributions to society with the public, media and policymakers
  - Developing career and business opportunities for barristers at home and abroad through promoting the Bar of England and Wales
  - Engaging with national Bars and international Bar associations to facilitate the exchange of knowledge and the development of legal links and legal business overseas

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<sup>1</sup> [Make Work Pay: improving access to flexible working - GOV.UK](#)

3. To ensure joined-up support, we work within the wider ecosystem of the Bar alongside the Inns, circuits and specialist Bar associations, as well as with the Institute of Barristers' Clerks and the Legal Practice Management Association.

4. As the General Council of the Bar, we are the approved regulator for all practising barristers in England and Wales. We delegate our statutory regulatory functions to the operationally independent Bar Standards Board (BSB) as required by the Legal Services Act 2007.

**Question 1 – 15:**

1. N/A.

**Question 16: In your view, has overall access to flexible working improved since the 2024 changes were introduced?**

2. –

**Question 17: Do you feel the proposed objective is appropriate for the consultation meeting?**

3. Yes.

**Question 18: What do you think should be the objective for this consultation meeting?**

4. N/A.

**Question 19: How much advance notice do you think an employee should receive before the meeting is held?**

5. C – 1 week. Employees requesting flexible working may be doing so because they are juggling work with other commitments, such as caring commitments. We consider that one week's notice is reasonable and would give the employee sufficient time to prepare for the meeting (and consult their union representative if they wish to) around their other commitments.

6. It may be sensible for the requirement to be for the employer to give "reasonable notice, and in any event notice of not less than one week". This would account for a factual scenario where an employee is on annual leave or planned sick

leave (for example for a scheduled operation) for the week prior to the meeting. In such circumstances “fair notice” would likely be more than week, allowing the employee time to prepare for the meeting while not on annual leave or sick leave.

**Question 20: Do you agree with the proposed requirements for setting up the meeting?**

7. Yes.

**Question 21: What do you think the requirements for setting up the meeting should be?**

8. N/A.

**Question 22: In your view, which of the elements set out in the suggested process above should be part of the meeting between a decision maker and employee about a statutory flexible working request? Select all that apply.**

9. A, B, C, D and E.

10. In particular, we support the proposition at (A). Flexible working requests often amount in substance to requests for reasonable adjustments. It would help both the employer and the employee to have clarity about whether an employer has a duty under sections 20 and 21 of the Equality Act 2010 to take proactive steps to assist a disabled employee, alongside dealing with the application for flexible working.

**Question 23: Do you agree that employers should be required to communicate the outcome of the meeting, as well as the outcome of the statutory request, in writing?**

11. Yes. Providing the outcome in writing ensures that both parties are clear about what decisions have been made and why. This will assist an employee who seeks to appeal the decision. It will also assist the parties and the tribunal should the employee seek to bring a claim in respect of any refusal of a flexible working request. On a practical level it will assist managers in considering previous requests as well and would generally be considered good practice to maintain a written record of this nature in the employee’s personnel file.

**Question 24 – 26: [For employers]**

12. N/A.

**Question 27: Do you have any further thoughts or suggestions on the process for the requirement to consult outlined above?**

13. The decision letter should set out the outcome of the meeting and the outcome of the statutory request and the reasons why a particular decision has been made. This will help the employee understand why their request has been rejected, and will help them formulate any appeal against the outcome, or seek legal assistance in the event that they want to bring proceedings in the employment tribunal. It may also assist them in deciding whether to make a further application to work flexibly in the future, both as to timing and content.

**Question 28 – 32: [For employers]**

14. N/A.

**Question 33: If you would like to see additional guidance for employees on flexible working, what topics do you think it should cover? Select all that apply.**

15. A, B and C.

16. We would welcome guidance for employees on making statutory requests in different contexts. In our experience, employees are more likely to submit informal, or non-statutory, requests for flexible working, than formal statutory requests. This may be because employees do not know about the statutory regime, or because they do not understand how to make a compliant request, or because the idea of making statutory request feels more intimidating than sending a more informal email to a line manager.

17. Guidance may encourage those employees to make formal statutory requests. We consider that this could be in the interests of both the employee and the employer because the legislation provides a clear framework for dealing with requests, which ensures that everyone understands exactly what is being asked for and why it can or cannot be provided. That guidance should also flag to employees any protection which the government considers that employees have in terms of suffering detriment for having made such a request as the fear of being subjected to a detriment can also be a deterrent factor in making a statutory request.

**Question 34: If you would like to see additional guidance for employees on flexible working, what format do you think this should take?**

18. As set in an answer to question 33, we would welcome further guidance. We consider that it would be preferable to provide a range of different formats (for example, dyslexic or neurodiverse employees may benefit from audio or visual formats).

**Question 35: [For individuals]**

19. N/A.

**Question 36: Which, if any, of the following ways to address barriers to flexible working do you think we should explore further over the years ahead? Select all that apply**

20. A, B, C and D.

21. In particular, C – see our answer to question 33.

**Bar Council**  
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For further information please contact:

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