Working Flexibly to Support a Healthy Work-life Balance:

A guide for RCN representatives

Healthy workplace, healthy you

Contents

Introduction

This publication supports the Royal College of Nursing's (RCN's) *Healthy Workplace* campaign by providing guidance to RCN representatives and other interested parties on one of the main issues affecting work-life balance today: flexible working.

The aim is to ensure that representatives can work with employers and policy makers in their workplaces and provide appropriate representation to RCN members who may need support to gain access to flexible working. It gives information on:

• how flexible working can lead to a better work-life balance for all, not just carers and parents

• ways to work flexibly

• RCN surveys to support negotiations

• relevant legislation

• links to the RCN's *Nursing Workforce Standards*.

A guide to flexible working

1. Flexible working and healthy workplaces

The RCN believes that to provide the very best patient care, health and social care staff should work in a healthy workplace. The RCN defines a healthy workplace as one which:

- offers fair pay and rewards

- has high quality employment practices and procedures which promote a good work-life balance and dignity at work

- protects and promotes employees' health and safety at work

- designs jobs which provide employees with a degree of autonomy and control, and

- provides equitable access to training and learning and development opportunities for all employees.

This document is part of the RCN's *Healthy Workplace* campaign and provides information and guidance to RCN representatives on how to make well-focussed arguments for fair policies promoting work-life balance through flexible working. It also outlines some of the various forms of flexible working which members may benefit from and describes how they can request them from their employer.

Standard 14 in the RCN's *Nursing Workforce Standards* references the expectation that the nursing workforce is supported to practice self-care and given opportunities at work to look after themselves. Flexible working policies can provide opportunities for nursing staff to manage their work-life balance in ways that promote their health and well-being.

2. Defining work-life balance and flexible working

For many people, achieving a good quality of life is dependent on striking the right balance between the demands of employment and their responsibilities outside of work. Work-life balance can be defined as: "Having sufficient control and autonomy over where, when and how you work to fulfil your responsibilities within and outside paid work." The RCN believes that the opportunity to work flexibly is key in achieving a good work-life balance, and that all staff can benefit from such working arrangements regardless of their gender or age, or whether or not they have caring responsibilities. The RCN also believes that flexible work opportunities can benefit employers and enhance their business/service delivery.

Previously, flexible working was described as "family friendly", meaning it was a provision that enabled parents and carers to participate in paid work without compromising their caring responsibilities. However, the right to request flexible working has since been extended to cover all employees, so the RCN uses the term "employee friendly" to describe policies that encourage a good work-life balance for all.

3. The changing nature of work and the workforce

The UK health care workforce has always been and continues to be very diverse. It inevitably includes a high percentage of parents and individuals with other caring responsibilities such as looking after relatives. People also wish to pursue other activities outside of work including life-long learning, charity work and/or community activism.

Good employers recognise that, to attract and secure the workforce they need to deliver effective services, they must offer a range of flexible employment policies and practices compatible with the competing responsibilities of their staff.

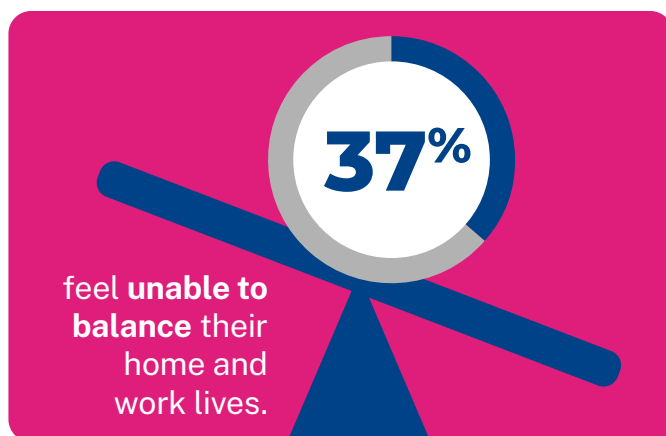# 4. The benefits of supporting work-life balance through flexible working

Work-life balance policies benefit health and social care employers, managers, employees and ultimately patients. Retaining experienced nursing staff makes good business sense and postively impacts on staffing for safe and effective care. Costs of providing employee-friendly working arrangements can be more than offset by the reduction in recruitment, turnover and absenteeism costs. Increased demand for nursing staff means that organisations which adopt such policies will gain a competitive edge in attracting and retaining a quality nursing workforce.

An ageing workforce also means that health and social care employers must look at ways of enabling older staff to work productively and effectively for longer. This can mean providing flexible working hours towards the end of nursing staff or care workers' working lives and pension schemes that allow staff access to flexible retirement opportunities. Good employers respect the needs of all staff to balance work and life outside of work. They understand that equal access to modern working arrangements leads to a committed and motivated workforce and a healthy and safe environment in which work flourishes. In turn, this creates an organisation able to attract and retain staff and reduce absenteeism and other costs associated with work-related stress.

5. What nursing staff say about their working lives

The RCN conducts regular surveys of members exploring and analysing working patterns, and staff attitudes towards them.

The *RCN Employment Survey 2021* reveals that nursing staff are feeling overworked and overloaded. They are working under intense pressure due to workload pressures due to the unprecedented challenges emanating from the COVID-19 pandemic on top of existing and worsening staff shortages.

37% feel **unable to balance** their home and work lives.

19% reported that they were **actively seeking a new job:** the main reasons being feeling undervalued, too much pressure and exhaustion.

In terms of work-life balance, these elements of working patterns are important:

1. those working part-time, full-time or job sharing

2. shift patterns

3. total working hours.

The *RCN Employment Survey 2021* found that just under two-thirds of nursing staff work full time, 33% work part time and a small number (4%) work occasional hours. The survey clearly shows how working patterns vary over the life course of nursing staff, with well over 90% of those aged under 34 reporting that they work full-time, compared to just under half (47%) of 55-64 year olds.

Women

35%

Men

12%

4% Occasional

33% part time

63% full time

RCN Employment Survey 2021 results

Age <34

90%

Age 55-64

47%
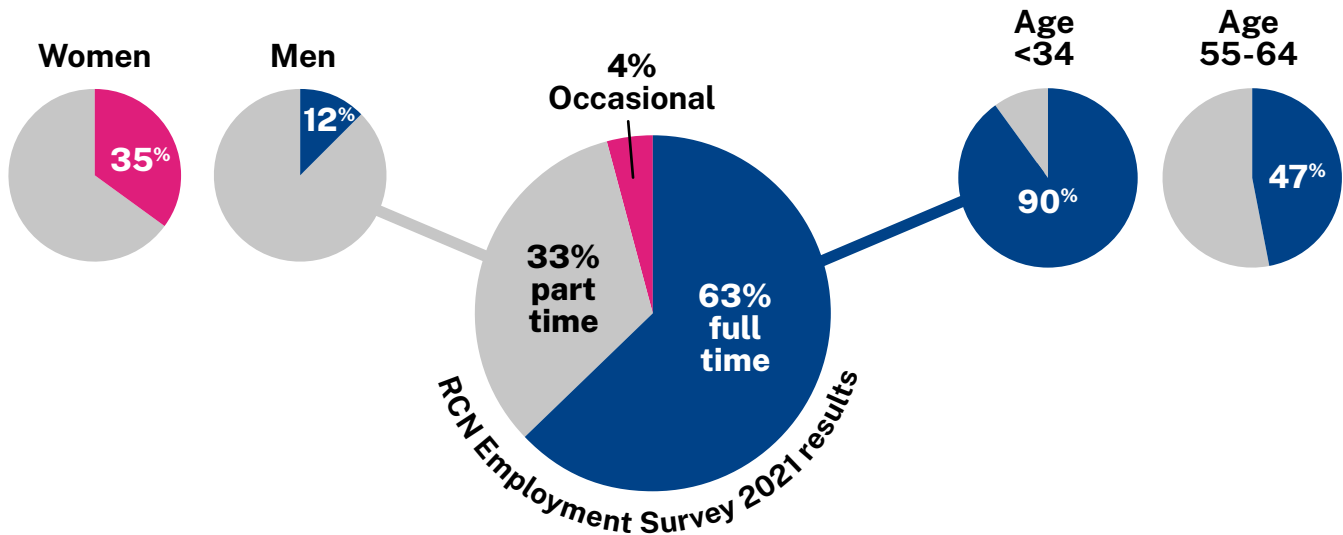
In addition, there is a fairly even split between those working either shift patterns or fixed hours. Shift working is most common among those working in hospitals, where just under two thirds (63%) work shift patterns while fixed hours working is most prevalent among those working in community settings (67%). Women are much more likely to work part-time hours than men; 35% of women work part-time compared to 12% of men.

74% work in excess of their contracted hours at least once a week, 38% do several times a week and 17% work extra hours on every shift. 49% of all who work additional hours reported that these were unpaid.

As the workforce ages and more health and social care workers need to continue to work to access their full pension benefits, and an increasing number experience ill health and caring responsibilities, the availability of flexible work will be key to ensuring effective workforce planning. The promotion of flexible working is key in supporting an extended working life.

Regarding choice over length of shifts, 47% of respondents were satisfied with the choice they have, while just over a quarter (26%) were dissatisfied. The proportion of respondents satisfied with their shifts has dropped steadily from a high of 62% in 2009.

Length of shifts

47% 😊   26% ☹️

Finally, the findings look at the cumulative impact of workloads and work pressure on individuals' work-life balance, with the survey showing that just one in three (32%) agree that they feel able to balance their work and home lives – falling from 62% in 2009.
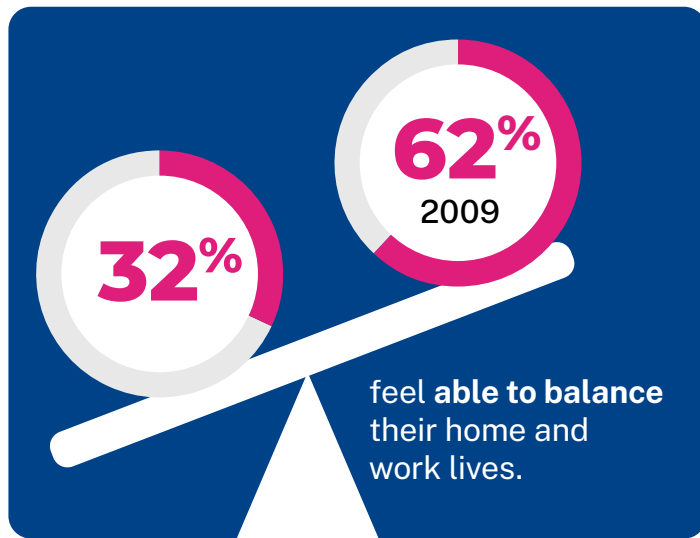
In your role as an RCN representative, a good starting point to improve the work-life balance in your organisation would be to ensure that your employer/human resources department is fully aware of the flexible working options that could be offered to staff. There should be a written policy on flexible working, agreed in partnership, that is updated regularly. However, a policy is only as good as its implementation, so the key should be to raise awareness and initiate dialogue both with management and employees. You may also want to encourage fair and transparent decision making by insisting that applications and outcomes from flexible working requests are reported to Partnership Forums/Joint Negotiating Committees to ensure equity of access across the workforce and across all groups protected under equality legislation.

6. NHS employers

From September 2021, NHS employers (in England and Wales) are required to comply with the guidance provided in the *NHS Terms & Conditions of Service Handbook* (Section 33: Balancing work and personal life).

NHS employees covered by section 33 of the handbook:

- have the contractual right to request flexible working from day one of their employment

- they can also make an unlimited number of applications for flexible working per year, without having to justify requests or provide specific reasons.

Managers are required to give meaningful consideration to all applications and follow locally agreed processes for monitoring the outcomes. There are also new requirements for better centralised oversight of processes to ensure greater consistency of access to flexible working. This includes an escalation stage for circumstances where a line manager is not initially able to agree a request.

Employers will be expected to promote flexibility options at the point of recruitment and through regular staff engagement through one-to-ones, appraisals and team discussions.

The new handbook provisions provide for the following stages once a flexible working request is received.

1. Initial exploratory stage with the line manager.

2. Escalation stage where any unresolved requests are referred on to explore options beyond the employee's immediate role/team.

3. Decision stage where a) agreed solutions are documented and processed or b) objectively justified reasons are provided for refusing a request together with details of the appeals process.

4. Appeals stage.

Following these changes, employers and unions will have been working to revise and update existing local policies and work on the changes needed.

The provisions apply in England and Wales, with similar measures expected to follow in Northern Ireland. NHS Scotland has also introduced the right to flexible working from day one of employment, however, any further policy changes will be introduced in line with its ongoing 'Once for Scotland' Workforce Policies Programme.

NHS Staff Council has produced a wide range of information and advice to enable NHS staff to make flexible working requests. This includes a flexible working request flowchart which details the steps line managers and staff in the NHS should take when making a request for a flexible working arrangement.

7. Independent health and social care employers

Independent health and social care employers determine their own policies, but these must comply with minimum legislative requirements. Further details are provided in Section 9. The RCN has also set out the *Nursing Workforce Standards* required to achieve staffing for safe and effective care.

8. Flexible working options

There are many forms of flexible working. It can describe a place of work, for example homeworking, or a type of contract, such as a temporary contract. Other common variations include:

(a) fixed working patterns to give certainty over hours worked and/or location

(b) part-time working

(c) flexitime around core hours

(d) averaged hours working patterns to allow a set number of hours to be averaged out over an agreed reference period, for example, annual, bi-annual, quarterly, monthly

(e) compressed/elongated hours to allow work to be condensed or stretched over a specific time period

(f) job-sharing

(g) term-time working

(h) swapping hours

(i) voluntary reduced working time (V-time)

(j) career break

(k) flexible retirement

(l)   homeworking for some or all of the working pattern

(m) shift work.

Each option could be taken alone or combined to suit an individual's circumstances. Recognising that a significant majority of nurses and health care workers are required to work shifts, this section also provides general guidance on how best to accommodate flexible working when shift work is a requirement of the role.

(a) Fixed working patterns to give certainty over hours worked and/or location

This could be a Monday to Friday, 9am-5pm role or could be a contract where there is no travelling required away from a central base.

Benefits to employee: This may be beneficial to staff with caring responsibilities, for example where they need to arrange childcare or need to be close to home throughout the working day.

Benefits to employer: Employers may benefit from this by ensuring they can staff peak hours or to cover certain sessional activity.

Notes: This is commonly achieved at recruitment but is more difficult for someone who works shifts or on a rotation to request to move to a fixed pattern. If an employee has a disability, such a change may be a reasonable adjustment to their work so may fall under the provisions of the Equality Act 2010.

(b) Part-time working

The employees are contracted to work fewer than the standard number of contractual hours for the type of work in question.

Benefits to employee: Employees can fit paid work around childcare and other commitments. Part-time work can be used to allow the employee to become more accustomed to increased leisure time in the run-up to retirement, or to supplement pension income (where re-employment is permitted). It can give an employee the ability to continue with the security of regular employment while at the same time pursuing other interests or activities.

Benefits to employer: Periods of peak demand in production or service can be targeted. This can be used to retain the skills of female employees after maternity leave.

Points to watch: Reduced pay may not make it feasible for all employees. There must be no less favourable treatment of part-time workers, compared to full-time, in relation to pay and other benefits such as pension, sick pay, holiday and training, unless it can be objectively justified.

Notes: A reduction in the number of hours worked may be a reasonable adjustment permitting a disabled individual to do or continue in a job. Overtime rates are paid only when the employee has worked beyond the normal full-time contractual hours for the position.

Variations: There is enormous variation in part-time working patterns. For example, some nurses start later or finish earlier, work only afternoons or mornings or fewer days in the week.

Relevant legislation:

Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000
Part-time Workers (Prevention of Less Favourable Treatment) Regulations (Northern Ireland) 2000
Employment Rights Act 1996
Employment Rights Act (Northern Ireland Order) 1996
Flexible Working Regulations 2014
Flexible Working Regulations (Northern Ireland) 2015

(c) Flexitime around core hours

A system that permits flexibility of working hours at the beginning and end of a day or shift. The employee must work designated core hours and complete an agreed number of hours over an agreed period, which is usually a month. The most common core hours are 10am-12noon and 2-4pm. The scheme might then allow a start time from 7.30am onwards, and a finish time up to 7.30pm.

Benefits to employee: Increased scope to manage work and personal commitments. Depending on the rules of the scheme, credit hours may be turned into full days off work. Travel to and from work may be easier and cheaper outside peak hours. Some people are naturally early or late risers and their working day can be fitted around these natural rhythms. Tasks requiring concentration can be undertaken during the quiet extended parts of the working day.

Benefits to employer: Flexitime can act as a recruitment and retention aid. Staff cover can be extended beyond the normal hours of work. Individual control over the start and end of the working day can be particularly helpful for those with caring responsibilities.

Points to watch: An accurate system of recording the hours worked is required. Depending on business requirements, it may be necessary to stipulate that adequate cover is provided during the flexi period. Working long hours can cause fatigue and affect performance. Unless the scheme is handled with care, additional burdens may be placed on some team members or service delivery may suffer at particular times.

Relevant legislation:

Working Time Regulations 1998
Working Time Regulations (Northern Ireland) 2016
Equality Act 2010
Employment Rights Act 1996
Employment Rights Act (Northern Ireland Order) 1996
Flexible Working Regulations 2014
Flexible Working Regulations (Northern Ireland) 2015

(d) Annualised hours/average hours working pattern

A system whereby the employee's contractual working hours are expressed as the total number of hours to be worked in an agreed reference period, often annually. This allows flexible working patterns throughout this period. Usually, the hours are divided into rostered hours, which are set, and reserve hours, when the employee can be called into work as demand dictates and to cover unplanned work and employee absence. Payment is usually in 12 equal instalments. However, some arrangements permit pay for the work done in the period to which the payment relates.

Benefits to employee: The set hours that an employee is rostered to work will usually be known well in advance. This offers regular salary level throughout the year even though hours of work vary. It typically results in improved basic pay for staff, and possibly salaried status because the new rate of pay takes into account the loss of overtime hours. Other improved benefits such as better pension, sick pay and annual holiday are often negotiated in the package.

Benefits to employer: Annualised hours arrangements may be suitable where there are predictable fluctuations in activity level for different teams over different periods. It is also useful where the situation is less predictable, but workload is likely to be heavy at points throughout the year and light at others. There is greater flexibility to match staffing to the demands of work, and the working hours necessary to produce effective service delivery.

Other benefits to employers include: Reduced overtime payments, improved productivity, and a reduction in the cost of employing temporary or bank staff.

Points to watch: Employees can be called in at short notice so may find they have less freedom in planning their leisure hours. Long hours at particular times of the year in response to seasonal demand can result in increased stress, absence, and difficulties for employees with caring responsibilities.

Overtime opportunities for employees are reduced or non-existent so can no longer be used as an incentive. The employer may find themselves paying for hours not actually used. Effective communication may be a problem, particularly where rostering arrangements mean individuals are away from work for long periods at a time. Demands on administrative time and resources are often high. The need for overtime may not be removed completely.

Notes: Annualised hours are rarely available on an individual basis. The option is usually introduced to provide greater flexibility in the way work is organised to accommodate peaks and troughs in demand for an organisation's product or service. An arrangement on overtime may need to be agreed. Similarly, there will need to be an agreement on what happens to reserve hours that have not been used throughout the year. Adopting an annualised hours system requires careful planning and communication. It will usually require union agreement and a lengthy period of employee consultation. Account must be taken of what happens when an employee leaves part way through a year. Averaged pay will affect the calculation of maternity and other benefits.

Variations:

Some systems work over a three- or six-month period rather than a full year.

Relevant legislation:

Working Time Regulations 1998
Working Time Regulations (Northern Ireland) 2016
National Minimum Wage Act 1998
Equality Act 2010
Employment Rights Act 1996
Employment Rights Act (Northern Ireland Order) 1996
Flexible Working Regulations 2014
Flexible Working Regulations (Northern Ireland) 2015

(e) Compressed hours

A system that permits employees to work their total number of contractual hours over fewer working days. Usually a five-day week is compressed into four days or four and a half days, or a 10-day fortnight into nine days.

Benefits to employee: An extra day per week/fortnight is freed up for the employee to pursue a hobby, further education, or spend time with dependants. There is no reduction in pay.

Benefits to employer: Quiet periods of work can be used more effectively if the employee's time off is arranged to coincide with them. Staff cover can be extended beyond the normal hours of work.

Points to watch: Working long hours can cause fatigue and affect performance, cancelling out the advantages of the scheme.

Notes: Where service cover has been extended by longer hours, consideration needs to be given to what will happen if the employee no longer wants to continue with the arrangement. Where more than one employee in a team wishes to work compressed hours, a rota may be necessary to ensure fairness, as some days (usually Monday and Friday) will be more popular choices for time off.

Relevant legislation:

Working Time Regulations 1998
Working Time Regulations (Northern Ireland) 2016
Equality Act 2010
Employment Rights Act 1996
Employment Rights Act (Northern Ireland Order) 1996
Flexible Working Regulations 2014
Flexible Working Regulations (Northern Ireland) 2015

(f) Job-sharing

This is where two part-time employees share the responsibilities of one position. In a shared responsibility arrangement, the individuals both carry out all the duties of the job, simply picking up the work where the other one left off. In a divided responsibility arrangement, the duties of the position are divided between the two individuals, with each providing cover for the other where necessary.

Benefits to employee: Job-sharing allows the post-holder more time for caring or other responsibilities. The employee works at regular, defined times, permitting arrangements in their free time to be made in advance. This can allow the employee to become more accustomed to increased leisure time in the run-up to retirement. It can also give an employee the continuing security of regular employment, while at the same time working on part-time basis.

Benefits to employer: Two individuals are likely to bring increased skills and expertise to the position. Peak periods of demand can be covered by hours when the two individuals work simultaneously. Sick leave and annual leave can be covered, and overtime savings may be made.

Points to watch: The RCN believes that all jobs should be open to job-share unless a valid business reason can be made. However, some organisations have an informal rule that senior or management positions cannot be shared. This is worth contesting. Increased costs are likely to result from benefits (for example, car and health benefits), training, overlap time and equipment where it cannot be shared. The arrangement is likely to be unsuccessful unless regular communication and handovers take place between the individuals. Account must be taken of what happens if one individual leaves. Demands on line managers increase with the number of individuals for whom they have responsibility.

Notes: One individual's prolonged sickness or other absence or an issue with their conduct will impact on the other individual in the arrangement.

Variations: A position could be split between more than two people.

Relevant legislation:

Equality Act 2010
Employment Rights Act 1996
Employment Rights Act (Northern Ireland Order) 1996
Flexible Working Regulations 2014
Flexible Working Regulations (Northern Ireland) 2015

(g) Term-time working

The employee works under a permanent contract but can take unpaid leave of absence during the school holidays. Although essentially a part-time contract when looking at the year overall, the employee works full hours during term time and no hours during school holidays. Salary is usually paid in 12 equal monthly instalments, although the employee could also be paid only for the time worked and receive no pay during the holidays. The contract usually specifies that no annual holiday should be taken during term time.

Benefits to employee: The problem of finding childcare during school holidays is removed, and the employee can spend more time with their children during this time. This provides a regular salary level throughout the year.

Benefits to employer: Term-time working makes it possible to recruit and retain those whose childcare responsibilities might otherwise keep them out of the employment market. This is particularly valuable in areas where recruitment is hard and is a means of attracting women back to work.

Points to watch: Other employees may be put under pressure not to take their annual holiday during the school holidays. The reduction in pay could act as a disincentive.

Averaged pay will affect the calculation of maternity and other benefits. Term-time working may be unsuitable where a long break from employment would be disruptive to the job or service provided, or where the employee has unique knowledge or skills that are needed on a consistent basis throughout the year. Care must be taken in the calculation of leave and other benefits to ensure that the correct pro-rata rate is applied.

Notes: Where a managerial role is being considered for term-time working, account must be taken of whether the team involved can work extended periods without direct supervision.

Variations: Longer hours could be worked during term-time and shorter hours during the school holidays to make up full-time hours.

Relevant legislation:

Working Time Regulations 1998
Working Time Regulations (Northern Ireland) 2016
National Minimum Wage Act 1998
Equality Act 2010
Employment Rights Act 1996
Employment Rights Act (Northern Ireland Order) 1996
Flexible Working Regulations 2014
Flexible Working Regulations (Northern Ireland) 2015

(h) Swapping hours

Employees can swap hours or shifts with colleagues doing the same type of work at different times of the day. Another version of this would be to provide staggered hours where there could be different starting, break and finishing times for employees in the same workplace.

Benefits to employee: Occasional changes in hours or shift can be organised. For example, to attend a school sports afternoon or prize giving, or to be at home for a delivery or to have repair work done. There is no loss of pay.

Benefits to employer: The needs of the business or service continue to be met. Employees are less likely to take sick days to accommodate their needs, so sickness absence is reduced. Where an employee would have taken a day's holiday to meet their personal needs, the employer may have had to organise cover and this need is removed. Minimal managerial involvement is necessary.

Notes: Noticeboards or the company intranet can be used by employees to advertise the shifts they want to swap. Such methods are likely to reach a wider number of potential swappers than word of mouth alone. It may not be possible or desirable to accommodate shift swaps between employees who are paid at different rates.

Relevant legislation:

Working Time Regulations 1998
Working Time Regulations (Northern Ireland) 2016
Equality Act 2010
Employment Rights Act 1996
Employment Rights Act (Northern Ireland Order) 1996
Flexible Working Regulations 2014
Flexible Working Regulations (Northern Ireland) 2015

(i) Voluntary reduced working time

A system where it is agreed that the employee will work reduced hours for a certain period, with a return to full-time hours at the end of this time. Salary, pension, holiday and other benefits are pro-rata during this time.

Benefits to employee: A temporary reduction in hours allows an employee to accommodate a specific event in their life, for example, a course of study or a relative's illness, but to return to the security of a full-time position.

Benefits to employer: The employee's skills are retained on a reduced basis at a point when they might otherwise have been lost completely and regained on a full-time basis when the agreed period comes to an end. The system could also be a way for an employee recovering from an illness or adjusting to an impairment to extend their return to work on a phased basis once their paid entitlement has been exhausted.

Variations: Although the variation in hours is usually temporary it may also be permanent. Employees could also volunteer to increase their hours.

Relevant legislation:

Working Time Regulations 1998
Working Time Regulations (Northern Ireland) 2016
Equality Act 2010
Employment Rights Act 1996
Employment Rights Act (Northern Ireland Order) 1996
Flexible Working Regulations 2014
Flexible Working Regulations (Northern Ireland) 2015

(j) Career breaks

A system where the employee has an extended period away from paid work, often with the guarantee of a return to the same or a similar job at the end of the time. For eligible staff working in the NHS, **Section 34 of the *NHS Terms and Conditions of Service Handbook*** outlines arrangements for employment break schemes.

Benefits to employee: The employee has an extended period of time away from the workplace to study, spend time with dependants, carry out voluntary work or perhaps travel abroad. A career break can be used as an opportunity for personal development.

Benefits to employer: The employee's skills are retained in the long term. New ideas and extra skills, motivation and enthusiasm may result from the employee's period of time away from the workplace. While the possibility of a career break to look after young children may be particularly attractive to parents, career breaks can also be used to attract, motivate and retain other sectors of the workforce, for example those who missed out on a gap year of travel between school and university.

Points to watch: Lack of pay over the career break period is likely to limit the number of employees for whom this will be an option. A replacement will have to be found for the employee in their absence or the workload divided between the remaining members of the workforce. The individual's status during the career break and the impact of the break on their continuity of service, pension and other conditions of service must be made clear. Thought needs to be given to how any business reorganisation or restructuring might impact on the employee's right to return. Time away from the workplace can lead to a loss of skills or confidence.

Notes: A period of induction and/or retraining may be necessary on the individual's return. Some means of keeping the individual informed about important developments in the workplace or field of work could be considered. This is no different however, to other long periods of absence, for example, maternity or ill health.

Variations: Particularly where longer periods of absence are concerned, the employee may have a right to first consideration for any vacancies rather than an absolute right to return. Under some schemes the employee is required to maintain regular contact with the employer throughout their absence.

Relevant legislation:

Employment Rights Act 1996
Employment Rights Act (Northern Ireland Order) 1996
Flexible Working Regulations 2014
Flexible Working Regulations (Northern Ireland) 2015
Equality Act 2010

(k) Flexible retirement

Flexible retirement allows organisations and staff to be flexible about the age at which staff retire, the length of time staff take to retire, and the nature and pattern of work in the lead up to final retirement. Staff may step down to a different role, for example, to reduce the level of responsibility, whilst remaining in employment. They may wind down to retirement by remaining in their current post but reduce the number of hours or days they work.

Benefits to employee: Flexible retirement provides the opportunity to reduce working time without giving up the structure and social companionship of employment. Individuals can free up time to pursue interests or take life a bit easier without making a big life and financial change in one go.

Benefits to employer: Flexible retirement retains valuable staff and reduces the time and costs of recruitment and training. By varying the nature and pattern of work in the lead up to retirement staff can stay working for longer in the organisation. It also assists succession planning by retaining valuable skills and experience which can be passed on to other staff.

Points to watch: Staff will need to be aware of the options and limitations offered by their pension arrangements and should check with their pension provider for full details.

Notes: Are flexible retirement options promoted to staff and are they included in existing policies? Staff who manage individuals or teams may need support to have retirement planning discussions with their staff.

(l) Working from home

This is an agreement where the employee carries out all or a proportion of their work duties from home rather than on the employer's premises. It may be on a full-time basis or a hybrid arrangement, for example, a regular arrangement of several days a week or on an ad hoc basis. Although unlikely to be appropriate for health care workers it may be relevant for those with managerial responsibilities that could be undertaken away from the ward/care environment.

Benefits to employee: Travel time and costs are reduced, often resulting in a reduction in stress. The system may permit more flexible hours. For example, the employee may be able to start work earlier as a result of no longer having to commute to work. The employee may be able to move away from their place of work to take advantage of cheaper house prices or a different lifestyle.

Benefits to employer: A wider catchment area for recruitment is created. Employees who move out of the immediate vicinity of the workplace may be retained. Productivity can be increased by reducing working time lost to traffic jams and public transport delays. Employees who do not have to commute to work may start their working day more mentally alert. Savings can be made on sharing of desks and equipment. The system may make work more feasible for an individual with a disability affecting mobility.

Points to watch: A high degree of trust may need to be placed in the employee as direct supervision of their activities will no longer be possible. Unless it is clear at which times the employee can be contacted at home regarding work, work time may overspill into the employee's leisure time. Employee motivation may be an issue. The employee may begin to feel isolated and out of touch with the workplace and the rest of the team. Communication may deteriorate, particularly if the individual rarely visits the employer's premises.

The employee should consider the advantages and disadvantages to a more permanent arrangement in terms of the equipment needed, and the financial implications, for example a reduction in commuting costs, but an increase in heat or lighting costs.

Notes: New technology is increasing the range of work for which home working may be suitable. The employer will need to carry out risk assessments of the employee's workstation and ensure that they are working safely. It must be made clear whether the employer or the employee is responsible for any necessary furniture, IT equipment or extra phone lines. The employer will need to ensure adequate insurance of all its property. Mortgage or rental agreements may prohibit working from home, so these should be checked. Where it is necessary for the employee to take confidential material home, thought should be given to provision for its storage. Safeguards to ensure that other people cannot access computer systems may also need to be considered. The impact of the employee's absence from the workplace on other employees in the team must be considered carefully. There should be clarity about the requirement to come into the office and other places of work for regular meetings.

It's the individual's responsibility to notify the employer of any changes to their home office environment that may affect their health and safety.

At the time of publication, the NHS Staff Council was developing guidance on home working. This will be made available on their website (**https://www.nhsemployers.org/topics-networks/networks-and-engagement/nhs-staff-council**).

Relevant legislation:

Working Time Regulations 1998
Working Time Regulations (Northern Ireland) 2016
UK General Data Protection Regulation (GDPR)
Health and Safety at Work Act 1974
Health and Safety at Work (Northern Ireland) Order 1978
Management of Health and Safety at Work Regulations 1999
Management of Health and Safety at Work Regulations (Northern Ireland) 2000
Health and Safety (Display Screen Equipment) Regulations 1992
Health and Safety (Display Screen Equipment) Regulations (Northern Ireland) 1992
Equality Act 2010
Employment Rights Act 1996
Employment Rights Act (Northern Ireland Order) 1996
Flexible Working Regulations 2014
Flexible Working Regulations (Northern Ireland) 2015

(m) Flexible work and shift working

Due to the nature of the nursing profession, not all the flexible working options which have been described here are practical for all staff, particularly those based in the acute sector or working shifts. While nursing is a 24-hour service, it is still important to incorporate choice by designing and operating work practices that realistically fit in with the lives of nursing staff. Evidence suggests that where nursing staff are given choice over their working patterns, specifically self-scheduling or self-rostering of shifts, there are likely to be improvements in both their physical and mental health. A pilot study across three NHS Trusts, supported by the Burdett Trust for Nursing, explored whether a team-based approach to rostering could give staff better control of their working patterns (Burdett Trust/Timewise, 2019). Significant improvements were realised in three areas.

1. Meeting the work-life preferences of staff.

2. Their input into rosters.

3. Improving collective responsibility for creating the roster.

There is no single most appropriate shift system and working time arrangements are a compromise between the needs of individuals and those with whom they work.

There is a diversity of shift arrangements operating in health and social care, but many do little to meet the needs of individual nursing staff or the clinical environment. Research has shown that there can be undesirable consequences for those working shifts outside standard daytime hours, particularly those covering the night or with early morning starts.

For example, shift work may result in:

- disruption of the internal body clock

- fatigue

- sleeping difficulties

- disturbed appetite and digestion

- reliance on sedatives and/or stimulants

- social and domestic problems, which in turn can affect performance, increase the likelihood of errors and accidents at work and might have a negative effect on health (Health and Safety Executive, 2006, paragraph 18).

Individuals will vary in their tolerance to shift work, because:

• some find it easier to fall asleep, sleep for longer and adapt more easily to changes in sleep patterns

• they may feel more alert at particular times of the day, for example, some people could be described as 'night owls', others as 'larks'

• the ability to adapt to shift work decreases with age

• they have differing degrees of health and fitness

• they use different behaviours or coping strategies

• they organise their domestic duties and social activities in line with their shifts.
(HSE 2006, paragraph 42).

Night shifts disrupt the internal body clock and night workers are likely to suffer from sleep loss, poor quality sleep and fatigue, which may cause ill health.

Rotating shift schedules will reduce the number of nights an individual has to work, as night work is shared. The direction and speed of rotation can influence how an individual adapts to rotating shifts. There is evidence that the internal body clock adapts easier to a forward-rotating shift pattern, such as those where the worker progresses from morning to afternoon to night shifts in a clockwise direction. Adopting a forward-rotating shift pattern, rather than backward rotating, may help reduce sleep loss and fatigue. Fast rotation of shifts (for example, every two to three days) minimises disruption of the internal body clock.

Points to watch:
Permanent night shifts should be avoided where possible, although some workers and supervisors may find them desirable. Staff who work permanent night shifts or early morning shifts should be made aware of potential risks through the provision of training and information.

Flexible shift working

Flexible shift working provides a variation on the traditional, fairly rigid, shift system. It means that employees can negotiate the shifts that suit their needs and/or rearrange shifts among themselves. Where self-rostering is effective there are often high levels of staff satisfaction with working hours. However, there must be a transparent and agreed framework of principles to support the self-rostering procedures and nurse managers must be willing to delegate accountability to staff for arranging rotas. They should also promote the use of self-rostering tools where staff are given appropriate control over setting shift patterns. Managers should have the skills and support in place to implement policies on flexible working and shift design.

Standard 11 of the RCN's *Nursing Workforce Standards* states that rostering patterns for the nursing workforce should take into account best practice on safe shift working and agreed in consultation with staff and their representatives. Adequate notice of rostered shifts (minimum of six weeks) and changes to shift patterns should be given to staff.

The length of shifts that nursing staff work can vary and many nursing staff work long shifts. Longer shifts are preferred by some individuals, such as those with caring responsibilities or those who travel long distances to work. However, fatigue at the end of a long shift can result in clinical error. Cumulative fatigue can result in health problems for staff and even 'burnout'. Careful rostering and internal rotation are strategies that are supportive. Clear policies and procedures need to be in place.

Where staff work long shifts, employers should offer appropriate support with respect to their health and wellbeing, and their ability to provide safe and effective patient care. Opportunities should be offered to move to shorter shift times where this is preferred.

The **Health and Safety Executive** recommend the avoidance of shifts that are longer than eight hours where the work is safety critical and physically demanding. They recommend that where 12-hour shifts are implemented there should be adequate rest breaks and that 12-hour night shifts should be limited to two or a maximum of three in a row to ensure compliance with working time regulations. Employers should ensure that optimal shift patterns are in place which provide for adequate rest and recouperation between shifts.

Benefits to employee: Occasional changes in shift can be organised to accommodate a particular need or event in an employee's life. Job satisfaction increases when employees' personal requirements are considered. Where partners or relatives are employed by the same employer, greater control over the shift patterns they work means they can share caring responsibilities.

Benefits to employer: The needs of the business or service continue to be met. Employees are less likely to take sick leave to accommodate their needs, so sickness absence is reduced.

Points to watch: Demands on administrative time and resources may increase. It may not be possible to accommodate all employees' requirements and preferences. The employee will also need to be aware that driving to and from work can be risky, particularly after a long shift, a night shift or before an early start.

Notes: The employee who wants to change their working pattern must apply to do this.

Variations: Employees' personal requirements may include part-time working, evenings or nights only, daytime only or shifts that co-ordinate with those of their partner or another relative.

Relevant legislation:

Management of Health and Safety at Work Regulations (Northern Ireland 2000)
Working Time Regulations 1998
Working Time Regulations (Northern Ireland) 2016
Equality Act 2010
Employment Rights Act 1996
Employment Rights Act (Northern Ireland Order) 1996
Flexible Working Regulations 2014
Flexible Working Regulations (Northern Ireland) 2015

The flexible bank

Many nursing staff who want a flexible shift pattern that gives them a balance between their work and home life decide to work permanently as bank or agency staff. However, they achieve this flexibility at a cost. They lose pension and other benefits, as well as the pay levels of permanent staff. As more flexible working patterns are introduced throughout the NHS and the independent health and social care sector, more and more nursing staff should be encouraged to apply for permanent positions that allow them to balance their time at work and outside of work and receive the pay and benefits they are entitled to.

Zero hours contracts

Many RCN members do work in forms of zero hours contracts. This is mainly by undertaking work through a 'nurse bank' or nursing agency. In both cases members make themselves available for work without knowing if any work is available. Many members value the ability to work on such contracts at particular points in their lives. However, many who work on a bank or through an agency also have a substantive contract of employment with an employer. This leads to concerns that in some areas nursing staff are not offered the opportunity to work 'overtime' and are rather re-directed to work these extra hours through the bank system. In some cases, the rates of pay through a bank system are less than overtime rates.

Reliance on bank staff can be seen to hide ineffectual workforce planning, an inadequate nursing workforce, cost-cutting vacancy control measures, and high levels of staff sickness absence. The RCN also has concerns that in some areas, particularly in social care, zero hours contracts are being exploited and used to drive down costs, with employment practices that are, in the opinion of the RCN, often unnecessary, bureaucratic, discriminatory, and unsafe.

9. Requesting flexible working

From September 2021, changes to the *NHS Terms & Conditions of Service Handbook* (Section 33: Balancing work and personal life) gives covered NHS employees the contractual right to request flexible working from day one of employment. Managers are required to give meaningful consideration to all applications and follow locally agreed processes for monitoring the outcomes. The handbook provisions establish contractual rights over and above the statutory minimum requirements on flexible working in the Employment Rights Act 1996 and the Children and Families Act 2014.

NHS Staff Council has produced a wide range of information and advice to enable NHS staff to make **flexible working requests**.

Staff should be encouraged to talk informally with their line managers initially. Line managers having conversations with their teams is also valuable to help find solutions and accommodate team needs. Significant changes, for example those with contractual impacts, such as moving to annualised hours or going part-time are expected to go through the formal process to ensure all the details are agreed and captured. It may be in the current work context a manager is not be able to agree to a request but there may be alternatives to explore. For example, there may be other teams within the organisation that would consider and accommodate the request. Managers should be open to considering this.

The NHS Staff Council has created a **flexible working request flowchart** which details the steps line managers and staff in the NHS should take when making a request for a flexible working arrangement. It is also important to look at your organisation's local policy on flexible working which should set out how to make flexible working requests.

Employers outside the NHS determine their own flexible working policies, but these must comply with the minimum legislative requirements as set out in the following section.

Statutory rights

Previously only parents and carers had a statutory right to request flexible working, but the introduction of the Children and Families Act 2014 extended that right to all employees regardless of their caring responsibilities. This important change, welcomed by the RCN, enables all staff to have access to working arrangements that will help them balance their work with their domestic responsibilities and activities. All employees have the statutory right to ask for flexible working if they:

• are an employee (but not an agency worker or in the armed forces)

• have worked for the employer for 26 weeks continuously before applying

• have not made another application to work flexibly during the past 12 months.

Section 33 of *NHS Terms and Conditions of Service Handbook* improves upon these provisions for NHS staff.

The law requires the application to:

• be made in in writing and dated

• state that it is an application made under a statutory procedure

• state whether a previous application was made, if so, when

• specify the change sought and when the employee wishes it to take effect

• explain what effect, if any, the change will have on the employer and how they may deal with such change.

Employers must deal with requests in a 'reasonable manner'. Examples of this include:

- assessing the advantages and disadvantages of the application

- holding a meeting to discuss the request with the employee as soon as possible

- offering an appeals process.

If an employer does not handle a request in reasonable manner, the employee can take them to an employment tribunal.

More detailed information can be found in the Advisory Conciliation and Arbitration Service (ACAS) statutory Code and guide on flexible working. ACAS makes recommendations on how employers conduct themselves. In Northern Ireland this information can be found in the Labour Relations Agency (LRA) statutory Code and guide on flexible working.

The law requires that all requests, including appeals, must be considered and decided on within a period of three months from the first receipt (unless the employee agrees to extend this period). Employers do not have to agree to the application if there is a good business reason not to. Employees have the right to ask for flexible working – not the right to have it. The business reasons for rejecting a flexible working request are as follows:

- The burden of additional costs.

- Inability to organise work among existing staff.

- Inability to recruit extra staff.

- Detrimental impact on quality.

- Detrimental impact on performance.

- Detrimental impact on ability to meet "customer" demand.

- Insufficient work for the periods the employee wants to work.

- Planned structural changes to the business.

Whilst this might seem like an all-encompassing list, it is not sufficient for an employer to turn down a request on a "hunch" that one of the above reasons might apply. As representatives supporting members or scrutinising decisions once they have been made, you should ask for evidence to support the employer's contention. The ACAS guide encourages employers to develop a policy for handing flexible working requests. This should aid transparency and equity of access but also provide information and guidance for line managers on how to consider competing or multiple requests. Of course, such a policy should be agreed in partnership and in your role as a local negotiator you will want to ensure that the following is reflected in any policy document.

- A commitment to fairness and transparency.

- A commitment to handling requests reasonably and equitably.

- Arrangements for employees to be accompanied to any meeting to consider a request (there is no statutory right to this so it will need to be negotiated).

- Arrangements for an appeal process (there is no statutory requirement to have an appeal process, but the ACAS guidance says there "should" be one, so again this will need to be negotiated).

- Monitoring procedures across departments and the wider organisation to ensure equity of decision making.

You may also wish to negotiate for the removal of the 26-week service requirement and for temporary changes and/or trial periods to be built into the policy.

Future changes to statutory rights

In 2021, the Government launched a consultation 'Making flexible working the default'. This set out proposals to reform statutory flexible working regulations (Flexible Working Regulations, 2014). The new proposals extend to England, Scotland and Wales and include the right to request flexible working from day one of employment, regardless of time served. This guidance will be updated when new legislation is introduced.

10. Making it work

While some approaches to flexible working practices will involve changes to individual contracts of employment and be relatively easy to implement, others such as flexitime or the imposition of annualised hours will have a greater impact on sections of the workforce as a whole. Before any such working pattern is implemented, it is important for management to commit to in-depth and meaningful consultation with employees and their representatives and recognise that gaining their agreement is likely to have a positive impact on the success of the scheme. Meaningful consultation gives all parties the opportunity to raise the issues that are of greatest importance to them and ensures that they are considered from all angles. Depending on the size of the organisation, it could take the form of an employee survey followed by focus groups and a pilot scheme of the new working pattern. The findings of any consultation should be communicated to the workforce, along with any proposed action resulting from the consultation. As an RCN representative, you can play an important role in this part of the process.

Flexible working opportunities are a key recruitment and retention tool for employers, yet some still consider them to be burdensome and inconvenient. As the workforce has to work longer until retirement age, the ability to work/retire flexibly will be an asset in keeping valuable skills and expertise in the workplace. As mentioned above, a good flexible working policy will contain a commitment to monitor applications and decision making to ensure that unintentional discrimination does not creep into the process. You will want to ensure that this monitoring is scrutinised in partnership and becomes a regular agenda item in partnership forum meetings.

11. Training, support and publicity

Both managers and employees may benefit from training to accustom themselves to unfamiliar working patterns. It is important to allow sufficient time to implement and fine-tune new working practices. A review period should always be agreed to examine how such changes are working in practice for all affected by it. All managers and employees should be kept aware of the flexible working options open to them via intranet or noticeboards.

To increase acceptance of flexibility throughout an organisation, examples of successful strategies could also be circulated via the intranet, noticeboards and staff newsletters. Line managers should be encouraged to promote flexible working arrangements rather than acting as gatekeepers aiming to restrict their use. You may like to suggest that your organisation's policy on flexible working practices is included in all recruitment literature to encourage applications from the widest range of job applicants possible.

While the benefits of work-life balance policies and practices such as flexible working are now more widely known about and accepted, like any employment provision they need to be crafted carefully and implemented fairly and equitably. This section covers the areas you may need in your discussions and negotiations with employers.

Negotiating and representing

12. The benefits of having work-life balance policies

Some employers may see the development and implementation of any kind of work-life balance policy as an initiative that will be more beneficial to employees than the organisation. However, this is not necessarily the case. When negotiating with employers on the merits of implementing a work-life balance policy such as flexible working, it is important to stress the benefits to the employer as well as to the staff.

The overall benefits to employers and managers include:

Lower staff turnover: This leads to reduced recruitment and training costs and better continuity of care. In times of nursing shortages, employee-friendly employers can compete more effectively for nurses in a tight labour market

Reduced absenteeism: Research shows that carers may take up to 12 days off a year, usually as sick leave, because caring arrangements break down. Absenteeism is costly to employers and puts extra strain on other staff, lowering morale

Less need to use bank and agency staff: Lower absenteeism and staff turnover reduce the need for bank and agency staff, so less time and effort is spent by managers on finding replacement staff. Also, nurses will not need to work exclusively on a bank if they can get the flexibility they need in a permanent post

Improved morale and staff wellbeing: This generates greater productivity and may also be seen to reduce turning up for work when they are still unwell. In addition to better recruitment and retention, research shows that employee-friendly employers report greater staff engagement, commitment and loyalty.

Enhanced corporate image: Increasing the ability to attract staff. A rise in the number of applicants gives greater scope for selecting staff with appropriate skills and experience

Demonstration of commitment to equal opportunities: Employment Tribunal decisions have found the absence of flexible and family-friendly working arrangements are discriminatory on the grounds of sex and/or marital status. Employee-friendly arrangements demonstrate the translation of policy statements into practice.

The benefits to nursing staff

Financial reward: Because they are able to continue working. There are not only immediate rewards, but also future returns such as career development and pension entitlements.

Less stress and an improved quality of life: Work performance is enhanced if staff are not concerned about balancing work with responsibilities at home.

Improved morale and a feeling of being valued at work: Increased morale reduces absenteeism and ensures that colleagues do not experience additional stress from having to cover gaps in the duty rotas, or to support bank and agency staff who are unfamiliar with the clinical area.

Potential to reduce stress and fatigue-related errors at work: Research shows that the negative aspects of shift work are reduced when staff are able to work their preferred shifts.

Reduction in sleep difficulties and other shift work-related ill health.

13. How you can influence the workplace

If your workplace does not have or promote employee-friendly practices, then urge management to take action. The main reason that more organisations with large numbers of staff avoid the issue of flexible working is the fear that it will be too complex to set up, and difficult to manage a system to keep track of everybody's working patterns. Despite the advantages of flexibility, many companies fear an avalanche of requests where employees dictate their hours of work. They believe it will result in extra costs or the inability to guarantee delivery of services.

Maintaining a fixed-roster pattern is seen as the safe low-maintenance option because everybody knows the routine, when it will be very busy or exceptionally quiet. However, introducing flexible rostering enables an organisation to challenge these assumptions and do something about them.

RCN representatives have an important role to play by working with employers and managers to improve flexibility. Nurse managers will not only be faced with new ideas but will also need to learn new communication and interpersonal skills to negotiate changes to working time arrangements within teams and departments. Line managers may also need support or training to help them manage any conflict that may arise in the team as a result of implementing new work-life balance policies. They will need to be transparent about the fairness of new processes and may welcome your involvement in discussing flexible work within teams/departments. New flexible shift patterns will affect rostering and workload distribution. But it is possible to accommodate new ways of working that can improve patient care, and help nursing staff achieve a healthier work-life balance.

RCN representatives can help by:

- raising awareness and initiating dialogue about flexible working with both management and employers

- checking that policies have been reviewed and in agreement with Section 33 of the *NHS Terms and Conditions of Service Handbook*

- requesting a staff survey to see what flexible work options staff would prefer

- suggesting a joint management and staff forum for developing appropriate policies

- identifying examples of best practice in similar organisations and seeking further information

- encouraging the development of good monitoring and evaluation systems for employee-friendly policies

- requesting that outcomes from flexible working requests are monitored to ensure equity of access across the workforce and all groups protected under equality legislation.

- ensuring that this monitoring is scrutinised in partnership and becomes a regular agenda item at partnership forum meetings

- ensuring an employer's human resources strategy and business plan includes a commitment to employee-friendly policies.

Representatives can also encourage all RCN members to influence the workplace by:

- taking the initiative and being proactive in finding out what employee-friendly arrangements are available to them

- being flexible in thinking about new ways in which work and shifts can be organised and challenging traditional methods of working

- giving feedback to their employer on arrangements already in place

- being supportive of other colleagues' needs to work flexibly

- telling their RCN representative about schemes that they have heard about that work well elsewhere, so that they can champion their introduction

- having realistic expectations about what can be achieved with limited resources and service delivery demands and recognising that not every request can be accommodated.

14. Good policy development

A policy on flexible working opportunities should be developed in partnership to support employees and managers in accessing and determining requests. As well as outlining a range of flexible work options, it should also provide a framework that enables managers and staff to see how different options may apply to different roles, tasks and situations.

Good flexible working policies are an important component of any organisation's flexible working strategy. The NHS Staff Council has produced guidance to help local joint employer-union partnerships review and agree changes of current policies to reflect the new contractual changes set out in Section 33 of the *NHS Terms and Conditions of Service Handbook*.

Employing organisations of NHS staff covered by Section 33 of the *NHS Terms and Conditions of Service Handbook* Handbook need to consider how they promote the right to request flexibility from day one and the availability of flexible working options.

Local partnerships should agree an appropriate policy process and supportive guidance for line managers which sets out how flexible working requests are managed. To support a positive culture of flexible working, employers also need to consider how they support and encourage open conversations about flexible working, including at one-to-one line management/supervision meetings, as part of well-being conversations, or as part of recruitment, induction and annual appraisal processes. Escalation routes should be identified where requests for flexible working cannot be accommodated in the employee's existing team.

Employers and trade unions should work in partnership to agree arrangements for a standard appeal process which is accessible to all staff. Employees have the right to be represented by a trade union rep in the appeal meeting.

Policies and processes agreed to support flexible working should be subject to an Equality Impact Assessment.

Organisations should ensure that dates relating to applications for flexible working and outcomes of decisions are recorded and reported through the usual partnership and governance structures. Reports must enable identification of any barriers affecting particular occupations/locations or employees or groups with protected characteristics. The results should be used for regular review and revision where necessary of policies and procedures to ensure continuing effectiveness and equity of access.

Over time, organisations should also assess the data on flexible working to identify any unintended impact of flexible working on career development and progression. You can advise your organisation that local policies need to cover:

- the range of options available and how they are communicated to staff

- eligibility issues and the need to ensure equity of access to flexible working, as far as practicable, regardless of role, team or pay band

- contractual issues

- compliance with other legislation (for example, Working Time Regulations, Health and Safety legislation)

- access issues and provision of equipment and IT connection, in the case of home-based working

- training issues

- line management/supervision

- variation in arrangements

- colleague cover in the case of illness, etc

- who in the organisation should deal with the requests

- monitoring and reporting arrangements which should take into account.
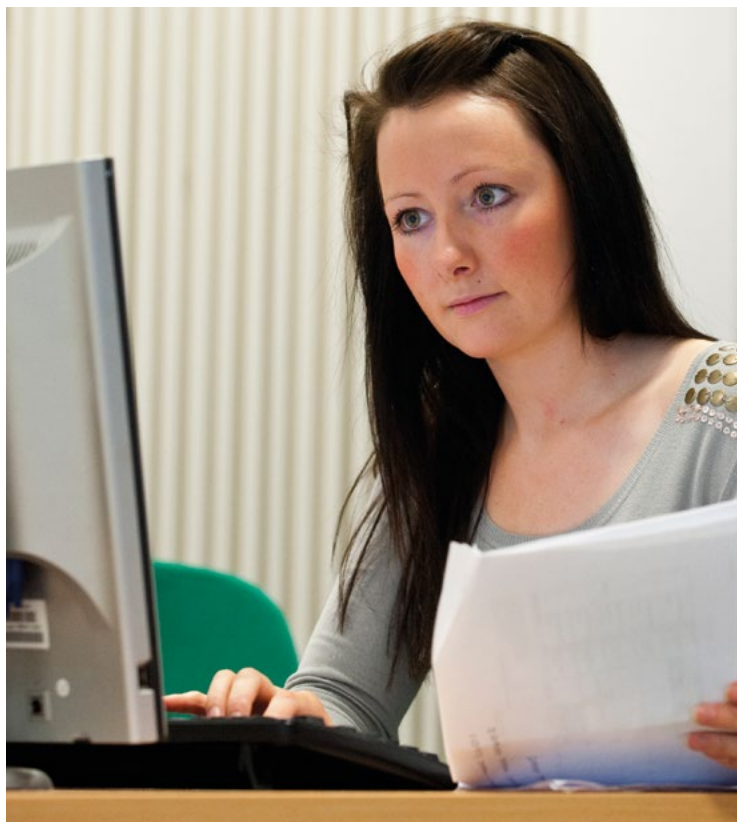
All policies should be supported by the training of managers to supervise flexible workers and to implement policies consistently and fairly. There should also be a central means for logging and monitoring requests for flexible working.

Here are some of the outcomes that you should aim for when negotiating the introduction and/or promotion of flexible working policies:

- recognising the wide diversity the personal circumstances of nursing staff and that social norms and practices are changing

- recognising that nursing staff need to establish a balance between work and personal responsibilities, and that the balance differs between individuals

- adopting a consistent recruitment and retention approach to employee-friendly arrangements that recognises and accommodates everyone's strengths, abilities and needs

- team-based self-rostering including sharing information about individual caring or other commitments and ambitions to ensure fair rostering, which respects patient demand

- involving nursing staff, RCN representatives and managers in change-making

- negotiating re-entry strategies to work prior to or during a career break plan that takes account of the nursing staff's working time needs.

15. Good practice case studies

The following case studies provide examples where different approaches to working flexibly have been successful and had benefits beyond their original intention.

Devolving rostering and self-rostering

"We are into the fourth or fifth month now that I haven't done the off-duty. The nurses said they wanted to look at some long days and other patterns. I was quite happy as long as we had some ground rules: a set of criteria which said the numbers and skills mix required on each shift and what was to happen if this wasn't achieved. A small steering group developed these and we wrote them down. I looked them over and had one of the nurses co-ordinate it for a four-week period – make it all work. They ensure that in that period full-timers have 150 hours and I discourage carry-over. "It's changed the shift systems as they have gone for a lot of long days. It's what they want, and they are managing it. I can't say I'd have done it that way but I don't think there are any safety problems but I do discourage them doing three or more long days in a row. Fairness, running the service and not pushing people around is the key. When you start laying down the law and trying to put unreasonable things in place for the sake of trying to control, then it just doesn't work."

A&E manager, Acute NHS Trust

This case shows that:

- the allocation of workload and rostering decisions does not have to be a central managerial function

- facilitating self-rostering or greater nurse involvement in rostering decisions requires training for ward managers in change and conflict resolution skills

- consultation with nurse representatives is vital.

Promoting flexibility at recruitment

"We have changed our advertising locally and nationally. I do a page advertisement each month saying that we offer flexible working. We work in partnership – what we can offer them, what they can offer us. It's open to any nurse. We promote it internally. All our patient records are on computer and we promote flexible working on the screen.

"What I want to ensure is that nurses know and understand that flexibility is for everybody. If they have a hitch in their life… be it child care arrangements, elderly care problems, relatives or just feeling unable to continue full-time, instead of thinking 'I've got to get out', come and talk and find out how we can find a solution. I'd rather not lose anyone. At interview if you are open in negotiations, you find that there is often someone who wants to do a series of lates or a series of earlies – put the two together and you have cover. So we say at interview, we are happy for you to work family-friendly hours but we would like, perhaps, one weekend a month."

Senior nurse, Acute NHS Trust

"In our maternity leave policy we encourage nurses to think about their hours of work when they return and to discuss this with the manager before going on leave. This doesn't change their contractual rights but it sends the individual off with some assurances that they will return at, say, three days a week on XYZ shifts. This helps nurses and managers to plan. We've just had a case where a nurse returned, by prior agreement, on just one day a week at times which suited her. She's willing to do a few weekend shifts also. She thinks it's fantastic. The important thing is to just get them back. Okay, they might only come back part-time but, as their children get older, they will often stay and increase their time. It's all about getting some sort of balance and talking openly about that."

Human resource manager, Acute NHS Trust24

These cases show that:

- rigidity of shift arrangements reduce recruitment

- employee-friendly working times encourage nurses to apply for vacant posts

- flexibility following career breaks encourages early return and eases re-entry to the workplace

- compromise is OK

- staff commitment improves.

Accommodating social lives

The case below shows that employee-friendly working arrangements are not exclusively aimed at parents or carers.

"I wanted to do a Spanish class but I thought this was nothing to do with work and they'd laugh at me if I asked to have off-duty every Wednesday night. But I got up courage and talked to the sister. 'It's fine', she said."

Band 5 nurse, Acute NHS Trust

This shows that:

- it is important to promote employee-friendly practices where other quality of life-matters are incorporated

- nurses' quality of life can be improved without damaging the service.

Useful tips

A series of brief case studies provide some more useful tips for nursing staff and ward managers about practices that can facilitate employee-friendly working arrangements. They show that there is no one way to implement work-life balance policies.

Off-duty fairness

"Nurses fill out the off-duty requests in order. Each month nurses move up the list; you might be third one month and second the next. So it's not the same people getting their off-duty."

Senior nurse, Acute NHS Trust

Predicting the monthly rota

"Many wards attempt to replicate each monthly rota in order to help nurses plan their child care and social activities. This rarely proved possible due to annual leave, sickness, recruitment difficulties, nurses' requests for changes and so on. However, many nurses appreciated any early warning of future work patterns. Permanence (nights) and predictability (rotas either rolled over or issued long in advance) help nurses balance work commitments with personal arrangements."

Senior sister, Independent sector hospital

Considering the partner's work patterns

"We try to be flexible like when somebody says 'my husband is a policeman and he's on a particular case and working at such and such time on this investigation for three months and the only thing I can do is work round him.' Even if it's at short notice we'll look at it and do what we can. We have to change the system to fit the person. I have a number of nurses with police officers as husbands and they bring in their fixed shift patterns. I use these to work round. Mostly they want to work any time their husband is not, particularly when you've got people who can't afford to go out for childminding and they are relying on one another. Lots of us are like that."

Senior sister, Independent sector hospital

"I request shifts to fit in with my husband's nights. Sue (the ward manager) asks what shifts your husband is doing and nine times out of 10 she fixes it."

Band 5 nurse, Acute NHS Trust Working across wards

"We have clinical support nurses to cover all shifts in case of sickness. They serve many wards and are qualified and know the working environment. There are three of them covering the three shifts across seven wards. One of our nurses works as this support person on a six-month secondment."

Acute NHS Trust

Providing accommodation

"Some nurses at the Queen's Medical Centre campus travel considerable distances to work in Nottingham and are provided with accommodation. A number work three consecutive 12-hour shifts (either days or nights) and stay over at the hospital. They return home (often 100 miles distant) for the remainder of the week. The provision of accommodation makes it possible for those nurses to work in Nottingham."

Acute NHS Trust Term-time wards

"Why don't we have a term-time only ward for waiting list initiatives? The ward can run day case waiting list initiatives and shut during the long holidays. It would tackle the waiting lists and there's a workforce out there more than willing to do it. Whatever we like to say, nursing is still a female-based workforce. If you're a female in a relationship more often than not you are the one who is looking after the children or relatives."

Senior nurse, Acute NHS Trust

Negotiating flexible working

"Our Trust has been proactively introducing flexible working for the last 18 months as a way of retaining staff. As an RCN steward I work with managers to help them consider how staff requests to work their preferred hours can be accommodated. We look at different options to see what could work. This might involve an arrangement such as job sharing, or an individual working some of their hours on one ward or unit and the remainder in another. This has worked really well. We have retained nursing staff by offering this flexibility. Managers know they have a member of staff on those specific shifts which is better than losing them from the workplace.

"Some managers remain resistant to offering flexible working. I was contacted by a member who was a carer for her dad and unable to attend work for 08.00. She had requested a later start time of 08.45 but this was refused because it impacted on handover. I attended a meeting with the member and her manager and listened to the rationale for the request being declined. This included the number of staff already working flexibly, the need for a full handover, the fact that the unit closed at a set time so the member wouldn't be able to complete her hours, and that time owing was a big issue.

"I discovered that staff worked late almost every day in the unit and they used time owing to have an afternoon off a week. This did not make any sense to me. I suggested that the member worked the hours 08:45 and received a handover from the staff working on her section that day, rather than a handover of the full unit. Instead of working until 16:00 she would be working until 16:45, which would reduce the time owing within the department meaning more staff would be available for the other shifts. This was trialled and worked well for both the Trust and our member, however, some of the staff liked doing the extra time and this way of working reduced that as they were contracted set hours.

"I advised the manager to look at the actual hours staff were required to be in the department and implement the organisational change policy, consult with staff and unions to change the pattern of working to ensure service needs are met without staff accruing time owing. I also suggested that the manager find out the preferred hours of working for all staff to see if this could be achieved. This resulted in a full consultation and one to one interviews. The end result was a unit with all staff working their preferred times."

RCN Steward, NHS Foundation Trust

Supporting staff with health issues

"Following a reorganisation, it was expected that all Band 7's within a division would have to cover a 7/7 24 hour bleep. A member of staff came to me explaining that following chemotherapy a couple of years ago, she is on long term medication which leaves her exhausted. She works days and starts at 07.30 but was often home in bed by 18.30, and feared she would be unable to continue working. I gained her permission to discuss her case with the Deputy Director of Nursing and negotiated an agreement that she will not have the bleep after 16.00 and will only work set day shifts. This arrangement will remain in place as long as the staff member is on the medication."

RCN Steward, NHS Foundation Trust

Informal approach

"As an RCN steward, I find that an informal approach to requesting flexible working is often better. A member's request is usually met when they have the opportunity to explain their personal reasons for seeking a flexible working arrangement. Many do not articulate it well on the forms provided."

RCN Steward, NHS Foundation Trust

Related legislation

Work-life balance is not a provision that is enshrined in law and employers are not obliged to have a specific work-life balance policy in place. However, all NHS employers are obliged to follow the provisions of section 33 in the *NHS Terms and Conditions of Service Handbook*.

In addition to the legal right to request flexible working, there are laws covering maternity, adoption and parental rights. The Equality Act 2010 and the Working Time Directive 1998 also have a bearing on flexible working rights

The Equality Act 2010 and flexible working

Employers can be rightfully concerned about how to manage competing requests for flexible working, especially where they interact with equalities legislation. For example, a refusal to permit a woman to work on a part-time basis may lead to claims of indirect sex discrimination under the Equality Act 2010. This is because a requirement for an employee to work full-time is deemed to have a disproportionate adverse impact on women (compared to men) since more women have the prime responsibility for childcare. Also under this Act, employers have an obligation to make reasonable adjustments to premises and/or working arrangements for disabled applicants or staff and this could include flexible working.

Employers will have to judge whether the requirements to make adjustments under this legislation means flexible work requests from disabled staff should be given more priority.

Working Time Regulations 1998 and flexible working

The Working Time Regulations provide rights to:

- a limit of an average 48 hours per week on the hours a worker can be required to work, though individuals may choose to work longer

- 5.6 weeks' paid leave per year

- 11 consecutive hours' rest in any 24-hour period

- an in-work rest break of not less than 20 minutes if the working day is longer than six hours

- one day off each week

- a limit on the normal working hours of night workers to an average eight hours in any 24-hour period, and an entitlement for night workers to receive regular health assessments.

- the ordinary reference period is 17 weeks, but regulation 23(b) permits this to be increased to up to 52 weeks under a workforce or collective agreement.

Note: Rest period rights may be varied under a workforce or collective agreement and there may be exceptions for shift workers and those working on call or standby who are entitled to compensatory rest. The Working Time Regulations 1998 require that all workers are entitled to on average 90 hours rest a week. The regulations apply to all workers, including most agency workers and doctors in training and should not be compromised by flexible working arrangements.

As a representative you should also be aware of the need for effective and meaningful consultation when employers wish to alter or change shift patterns. This would be considered a contractual change so should be covered in the usual collective consultation processes of the organisation. Insist on the matter being discussed in partnership forum meetings and seek advice from you RCN office if necessary.

References and useful websites

Acas (2014) *Acas Code of Practice on Flexible Working Requests* Available online at: **www.acas.org. uk/acas-code-of-practice-on-flexible-working-requests** (Accessed 11/2/22.). The guidance in this Code, as well as helping employers, will be taken into account by employment tribunals when considering relevant cases. It also provides information for employers and employees on making and responding to requests for flexible working. There is also a flexible working policy template.

Acas (2014) *The Right to Request Flexible Working: an Acas Guide.* Available online at: **https://www.employmentlawwatch.com/wp-content/uploads/sites/7/2014/07/The-right-to-request-flexible-working-the-Acas-gui.pdf** (Accessed 15/2/22)

Acas (2014) *Flexible Working* Available online at: **www.acas.org.uk/flexible-working** (Accessed 15/2/22)

Chartered Institute of Personnel and Development *Flexible Working. Guidance, practical tools and resources to help you embed flexible working in your organisation* Available online at: **www.cipd.co.uk/knowledge/fundamentals/relations/flexible-working** (Accessed 11/2/22)

Equality and Human Rights Commission (2019) *Flexible Working: How to Create and Champion a Flexible Culture* Available online at: **www.equalityhumanrights.com/en/working-forward/flexible-working-how-create-and-champion-flexible-culture** (Accessed 11/2/22)

Gov.uk *Flexible Working* **https://www.gov.uk/flexible-working** (Accessed 15/2/22)

Health and Safety Executive (2006) *Managing shift work: Health and safety guidance* **https://www.hse.gov.uk/pubns/books/hsg256.htm** (Accessed 15/02/22)

Health Education England (2020) *Flexible Working in Healthcare* Available online at: **www.hee.nhs. uk/sites/default/files/Flexible%20working%20in%20healthcare.pdf** (Accessed 14/2/22)

NHS Employers (2021) *NHS Terms and Conditions of Service Handbook* Available online at: **www.nhsemployers.org./tchandbook** (Accessed 11/2/22)

NHS Employers (2021) *Flexible Working FAQs* Available online at: **https://www.nhsemployers.org/articles/flexible-working-faqs** (Accessed 14/2/22)

NHS Employers (2021) *Flexible Working in the NHS* Available online at: **https://www.nhsemployers.org/news/flexible-working-nhs** (Accessed 14/2/22)

NHS Employers (2021) *Guide to Making Flexible Working Requests Flowchart* Available online at: **https://www.nhsemployers.org/publications/guide-making-flexible-working-requests-flowchart** (Accessed 14/2/22)

NHS Employers (2021) *Flexible Working - Enablers for Change* Available online at: **https://www. nhsemployers.org/articles/flexible-working-enablers-change** (Accessed 14/2/22) Flexible working enablers for change to support NHS employers to embed the key changes to section 33 of the NHS Terms & Conditions Handbook. Ten enablers for change are available, along with practical guidance and relevant examples of best practice in flexible working.

NHS Employers (2020) *Supporting the Well-Being of Shift Workers In Healthcare* **www.nhsemployers. org/-/media/Employers/Publications/Health-and-wellbeing/HSWPG-Shift working-guidance.pdf** (Accessed 15/02/22)

NHS England (2020/21) *People Plan* Available online at: **https://www.england.nhs.uk/looking-after-our-people/the-programme-and-resources/we-work-flexibly/** (Accessed 14/2/22)

NHS Scotland (2015) *Supporting the Work-life Balance PIN Policy* Available online at: **www.staffgovernance.scot.nhs/uk/media/1410/supporting-the-work-life-balance-pin-policy.pdf** (Accessed 11/02/22)

NHS Staff Council (2021) *Guidance for Joint Union-Employer Partnerships on Reviewing Flexible Working Policies* Available online at: **https://www.nhsemployers.org/sites/default/files/2021-07/Joint%20negotiating%20guidance%20-%20reviewing%20flexible%20working%20policies_July2021.pdf** (Accessed 11/02/22)

NI Business Info *Flexible Working: the Law and Best Practice* **www.nibusinessinfo.co.uk/content/flexible-working-policy** (Accessed 15/02/22)

Royal College of Nursing (2021) *Flexible Working* Available online at: **rcn.org.uk/get-help/rcn-advice/flexible-working** (Accessed 11/02/22)

Royal College of Nursing (2021) Nursing Workforce Standards Available online at: **rcn.org.uk/professional-development/publications/rcn-workforce-standards-uk-pub-009681** (Accessed 11/02/22)

Royal College of Nursing (2021) *RCN Employment Survey* Available online at: **rcn.org.uk/professional-development/publications/employment-survey-2021-uk-pub-010-075** (Accessed 15/02/22)

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Timewise (2019) *Improving Nurses' Work-Life Balance* Available online at: **https://timewise.co.uk/wp-content/uploads/2019/09/Timewise-Nursing-Report-2019-1.pdf** (Accessed 15/02/22)

Useful websites

Acas: acas.org.uk

NHS Employers: nhsemployers.org/

NHS Scotland: scot.nhs.uk

NHS England: england.nhs.uk

Health and Safety Executive: www.hse.gov.uk

Health Education England: hee.nhs.uk

Labour Relations Agency lra.org.uk

Northern Ireland Direct Government Services: nidirect.gov.uk

Royal College of Nursing: rcn.org.uk

Working Families: www.workingfamilies.org.uk

To find out more about the RCN's healthy workplace campaign, visit **rcn.org.uk/healthyworkplace**