



Implementing the Recommendations of Imelda Walsh's Independent Review

Amending and Extending the Right to Request Flexible
Working to Parents of Older Children

UNITE – the Union RESPONSE

November 2008

Implementing the Recommendations of Imelda Walsh's Independent Review Amending and Extending the Right to Request Flexible Working to Parents of Older Children

RESPONSE OF UNITE – THE UNION

Introduction

This response is submitted by Unite, the union. Unite is Britain and Ireland's largest trade union with 2 million members across the private and public sectors. As the union's members work in a range of industries including manufacturing, financial services, print, media, construction, transport, local government, education, health and not for profit sectors, we have extensive experience of representing men and women workers who seek to balance their work and caring responsibilities, including through the right to request and duty to consider flexible working.

1. A welcome proposal

Unite strongly welcomes the recommendation to extend the right to request and the duty to consider flexible working to parents of children up to the age of 16:

- We believe that children of any age need their parents whether they are unwell or healthy and this is also true for other family members
- Older children face a series of pressures that need to be recognised, from exams and family bereavement or breakdown, to bullying and negative peer pressure. Parents should not have to put their jobs at risk in order to support their family
- The chance for parents and carers to work more flexibly to support their older children at demanding times is vital. These recommendations are a step towards strengthening the right to flexible working and encouraging many women (or men) to stay in or return to full time or better quality part time work
- Keeping parents in work means better chances for children and can help tackle women's pay and employment status, progression and child poverty
- Raising awareness on the benefits of flexible working can change the working culture

2. Services, Businesses and Parents of Older Children need Flexible working no later than the planned start date of April 2009

We strongly welcome the extension of flexible working rights to parents of older children as proposed in April 2009. We have been very concerned at media reports that in view of the current economic difficulties, there may be a delay in the extension of the right to request and the duty to consider flexible working.

We strongly challenge the suggestion that flexible working is a “burden on business”, and something that cannot be introduced in the current economic circumstances. On the contrary, enabling those with the skills, experience and commitment needed to remain in work while they carry out their family responsibilities is vital.

Additionally, we have experience of working with employers to agree a “win-win-win” approach :

- flexible working for workers
- greater flexibility in the organisation of work for employers
- meeting new or changed service delivery and business needs such as weekend working, just-in-time working methods

The Local Government NJC Unions and Employers Organisation joint guidance on Work-Life Balance, and the TUC-Bristol City Council major project on Working Time and flexible working demonstrate the practical success of this approach. We also have experience from the private sector, eg in the food industry when cook-chill production methods were introduced.

3. Response to Questions in Consultation document

Q1 Having regard to the existing guidance and templates available on the Business Link Website and to any particular characteristics of parents of children aged 16 and under, what more do you think that Government can do to assist businesses, particularly small businesses, in implementing flexible working arrangements?

First and foremost, our experience shows that the role of union equality representative has been particularly important in supporting implementation of flexible working, both in terms of supporting individual workers to identify their needs appropriately, and in raising awareness with the employer and other workers on the issue in general. As union equality representatives do not currently have sufficient rights to carry out their role, we would call for this to be addressed in the new Equality Bill, recognizing its importance to support flexible working in particular, as the following examples show :

In one manufacturing workplace, for example, a white male union equality representative who has agreed time off from the employer has supported a number of men workers who have non-resident parental responsibilities following divorce. The divorce settlement has led to the time they spend with their children being restricted to specific hours and days which do not readily fit with their shift pattern, and the support provided by the union equality rep has been very important to assist in finding an effective solution with the employer.

In the civil aviation industry, for example, a woman union equality representative of Asian origin who does not receive agreed time off from the employer in this role, has raised awareness of flexible working amongst union members and representatives and done her best to support individuals in her own time, and through using holiday time. However, she feels the lack of support from the employer for this role has meant missed opportunities to resolve difficult issues, and generally to support workers balancing their home and family responsibilities

However in those workplaces where the employer recognizes the role, and we strongly recommend that the role of union equality representatives be included as part of the extension to the flexible working regulations

The Business Link Website is a helpful tool, but in our experience, many employers that could benefit from using it may not be aware of its existence, especially small businesses.

In negotiations with employers, Unite has regularly provided information for employers on flexible working and other related working arrangements, including suggesting they access helpful BERR and ACAS information on the web-site.

We would suggest that :

- this “tool” be included as a link in a wider range of government and employer web-sites, including cross-referencing from other issues that employers may currently be looking up, such as: “working time, redundancies, maternity, training”
- sufficient resources be provided to ACAS to assist in ensuring the “tool” is updated, particularly in the light of the current economic situation
- the DTI ‘Work and Parents : Flexible Working Guide’ including forms as well as guidance, is reissued with the changed criteria for flexible working, as workers and unions, as well as employers found the format particularly useful

Finally, our experience of working with employers on flexible working has shown the need for greater awareness raising of the rights, so that their lack of knowledge cannot act as a barrier. In particular, we have been concerned that employers are made aware that the legal right to agree a short-term flexible working arrangement exists. Guidance on Form FW(B) clearly states that *“The agreed new working pattern will be a permanent change to the*

employee's terms and conditions of employment, unless agreed otherwise" but our experience is that the first part of this information is followed, rather than the important words "unless agreed otherwise." We would propose that examples of different agreements that have been reached could be inserted here to demonstrate that a short-term changed working pattern can be agreed.

In the bus industry, for example, where it was identified that bus scheduling limited the availability of flexible rosters, we represented new mothers who were prevented from obtaining flexible working because other workers who no longer required it had been permanently allocated a flexible roster. This situation was unnecessarily creating difficulties between workers, because the employer was convinced they did not have the right to agree short-term arrangements. We are pleased to report that we are now in the process of negotiating with the employer for a flexible working policy which is fairer to all.

Finally, while recognising that smaller employers often require additional support as they do not have eg Human Resource departments or Equality Officers to assist, our experience with some smaller employers is that they have a positive approach to flexible working, because of greater knowledge and understanding of individual workers' situations. It would be important not to always assume that smaller employers will not provide flexible working.

Q2 Would you agree that it is sensible to remove the obligation for employers to send a formal letter whenever they approve an employee's request to change their working pattern? Please outline your reasons for why you think this.

We do not agree that this is a sensible proposal, and we do not agree that it will result in savings, as our experience is that dealing with differences between the worker and management over what has been agreed will potentially take a great deal of time and cause difficulties.

The two examples below demonstrate how less formal agreements reached with one manager are then later disputed, leading to much more serious problems than would have been the case had a more formal statement been provided :

Example 1 : A health visitor had a verbal agreement that she could leave early as long as she kept her mobile phone on, so that she could support the routine care needs of her child with Autism. This flexible working arrangement was later stopped by a new manager, who refused to recognise the informal arrangement and required she make a formal request he could then deny. Following representations from the union, we are seeking an agreement to resolve this situation through the use of compressed hours, but clearly the situation was made much more difficult, stressful and time-consuming because of the first arrangement not having been set out in writing.

Example 2 : A worker who had been appointed on the basis of an informal commitment at interview that she would not be required to work weekends, because of her childcare responsibilities, successfully worked on this basis for two years, and other workers remained willing to cover for her weekends as this fitted their working lives well. However, as soon as a difficulty arose between her and the employer which led to a grievance, the informality of the arrangement was used against her, she was told the manager should not have reached the agreement at interview, and she was forced to be part of the weekend rota, even though flexible working was nothing to do with the issue. Had the arrangement been formal, the two issues would have been dealt with separately and a fairer and more appropriate solution achieved with a great deal less time and stress.

Q3 Please consider the partial impact Assessment : we would welcome any comments on its analysis of costs and benefits, a key element of which is the analysis that the deregulatory measure would lead to a 65% reduction of the administrative burden associated with this particular information obligation

While recognising the government's commitment to reduce any unnecessary "red tape", as the above examples show, we would identify that this letter is a necessary step in the regulations. The cost-benefit analysis set out in the partial impact Assessment needs to include the extensive additional time and costs associated with disagreements that can arise where flexible working is agreed and operated, but not confirmed in writing, and then later taken away. Our experience shows that such a move would be a false economy in practice, and we would advise that the requirement remains.

4. Further issues for consideration

As set out above, Unite strongly welcomes the government's proposals to implement the recommendations of Imelda Walsh's Independent Review, and we support the government's commitment to promote flexible working. The legislation and its extension to older children ensure that employers address the request for flexible working. Our experience shows that although some cases are granted, far more are refused, including on a blanket basis which tends to underestimate the true number of requests that are not agreed to. For example, in one food factory with a mainly female workforce, while all administrative workers were provided with the opportunity to request flexible working, all workers on the production line were issued with a blanket refusal. This example contrasts very poorly with a car factory with a mainly male workforce, where all workers, including those on the production line are given the opportunity to request flexible working, and none suffer a blanket refusal.

Our view remains that the current right would be greatly enhanced through the addition of a requirement on employers to objectively justify any refusal, as without this, flexible working opportunities can be denied on a generalised basis.

Further, we are finding that employers are citing almost any business related grounds for refusal without properly looking into the circumstances. Our members have been forced to lodge a grievance or find other legal remedies to win their case. This of course, puts more pressure and worry onto our members at a time that is already difficult for them, and does not assist the employer or positive industrial relations either. We would therefore advise that it would be important to continue to review, improve and further strengthen these rights.

We attach some case study examples of how flexible working is operating in practice to assist.

In the longer-term, in line with the policies adopted by a number of prominent employers eg BMW, BT, we would support a broader, inclusive **right to flexible working**. This right would mean employers would seriously consider any request to work flexibly, and would grant it except where refusal can be objectively justified.

Finally, we have found that employers who are committed to provide flexibility regularly review and improve their work-life balance arrangements, and provide training for those managers responsible for the operation of these arrangements, and time off for union reps to receive this training, too. In the longer-term therefore we would like to see the importance of regular reviewing and monitoring of the effectiveness of flexible working arrangements built into the procedures for operating these regulations. This would specifically include:

- review data on requests for flexible working to ensure that they are working in practice, or to identify particular needs in a certain occupation or area, or lack of take-up amongst particular groups of workers
- training for all managers operating flexible working systems, and paid release for union representatives to receive such training

Implementing the Recommendations of Imelda Walsh's Independent Review

Amending and Extending the Right to Request Flexible Working to Parents of Older Children

Case Study Examples

1. A member, who is a single parent and has a child aged 13, is having real problems in being allowed some flexibility with his shifts. He has asked if he could work no later than 7.00 pm but the company are not being very helpful. In fact he is at the third stage of his grievance.
2. Two separate cases of two members where one works in a call centre and the other in a factory. Both have children with ADHD who had to be met at the school bus. As the children got older they developed behaviours that seriously concerned their parents and they needed to be supervised before and after school. The employers facilitated the request of both parents to start late and finish early.
3. A parent with sole caring responsibility for her 6 year old son needed a term-time contract as she is a health visitor running an excessive caseload. Initially, her request was denied but was won on appeal. We are in the process of negotiating an agreement on annualised hours and a reduction in hours for her.