

REQUEST FOR FLEXIBLE WORKING POLICY

A Guide For Employees and Managers

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INVESTOR IN PEOPLE



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1. Introduction

Certain employees have the legal right to request flexible working. Whereas there is no automatic right to work flexibly, where an employee meets the eligibility criteria, the employer has a statutory duty to consider their application seriously. This policy sets out the eligibility criteria for requesting flexible working and the procedure that will be followed at Cherwell District Council in considering such requests. Where an employee does not meet the statutory eligibility criteria they can still approach their line manager to determine whether any flexible working opportunities exist.

2. Employees' Rights

- To apply to work flexibly.
- To have the application considered properly in accordance with the procedure, and refused only where there is clear business ground for doing so.
- To have a companion when meeting their line manager to discuss the application.
- Where an application is refused to have a written explanation why.
- To appeal against the employer's decision to refuse an application.
- To take a complaint to a tribunal in certain circumstances.

3. Employees' Responsibilities And Best Practice

- To provide a carefully thought out application.
- To ensure the eligibility of their application by checking that they meet all of the required criteria and provide all of the required information.
- To ensure that the application is made well in advance of the date the employee would like the change to take effect from.
- To arrive at meetings on time and to be prepared to discuss the application in a constructive and open manner.
- If necessary, be prepared to be flexible, in order to reach an acceptable agreement with their line manager.

4. Employers' Rights

- To reject an application when the desired working pattern cannot be accommodated due to service and business needs.
- To seek the employee's agreement to extend timescales where it is appropriate to do so.
- To consider when an application is withdrawn, due to appropriate circumstances.

5. Employers' Responsibilities And Best Practice

- To consider requests properly in accordance with the procedure detailed within this policy.
- To ensure that the time limits outlined in this policy are adhered to.
- To provide the employee with appropriate support and information during the course of the application.
- To only decline a request when there is a recognised business case for doing so and to explain why this applies to the employee, in writing.
- To ensure that any variation from the procedure set out in this Policy is agreed in advance between the employee and their line manager, and recorded in writing.

6. Eligibility To Make A Request

Parents Who Can Make A Request

A parent can make a statutory flexible working request if they:-

- have a child aged 16 and under
- have a disabled child who is under 18, and who is in receipt of Disability Living Allowance (DLA)
- are either:-
 - The mother, father, adopter, guardian, special guardian, foster parent or private foster carer of the child or a person who has been granted a residence order in respect of the child; or
 - Married to or the partner or civil partner of the child's mother, father, adopter, guardian, special guardian, foster parent or private foster carer or of a person who has been granted a residence order in respect of the child
- make the application no later than two weeks before the child's 17th birthday or 18th birthday (in the case of a disabled child)

Carers Who Can Make A Request

A carer can make a statutory flexible working request if they care, or expect to be caring, for an adult who is either:-

- A spouse, partner, civil partner or relative
- Someone who lives at the carer's address

A relative is a mother, father, adopter, adoptee, guardian, special guardian, parent-in-law, son, son-in-law, daughter, daughter-in-law, brother, brother-in-law, sister, sister-in-law, uncle, aunt or grandparent. Step-relatives, adoptive relationships and half-blood relatives are also included.

Other eligibility criteria

To have the statutory right to make a flexible working request an employee must also:-

- have been continuously employed for 26 weeks by the Council by the date of the application
- not have made another statutory request during the past 12 months
- be an employee and not an agency worker

Under the statutory arrangements, applications cannot be made for any other reason. However, where an employee does not meet the eligibility criteria they can still approach their line manager to determine whether any flexible working opportunities exist. Any request for flexible working should be put in writing.

7. Scope Of Requests

Eligible employees can make requests that include a change to work hours, work patterns and place of work.

The initial onus is on the employee to make a considered application. They should determine in advance the preferred pattern of work, the financial impact this might have on them, the effect on their team's service delivery and work colleagues, and how these might be accommodated. This is particularly important as the employee is only allowed to make one application per year under the right (from the date of the previous application) and any agreed change will be a permanent change to the employee's terms and conditions of employment (unless an alternative arrangement is agreed).

8. How To Make An Application For Flexible Working

A Flexible Working Application Form (Appendix 1) should be completed by the employee. However, it is not mandatory to use this form, and as long as the application includes all of the information listed below then it can be made by email, fax or letter. The application should be submitted well in advance of the date when the employee would like the change to commence due to the time required to allow the procedure to be completed.

To ensure the most appropriate line manager is involved in considering the application, it should initially be submitted to the Head Of Service who will then nominate the line manager to deal with the request.

An application for flexible working must:

- state that it is being made under the statutory right to make a flexible working request;
- confirm that the employee has, or expects to have, caring responsibility for a child or adult in need of care
- confirm the relationship with the child or adult in question
- specify the flexible working pattern applied for
- explain what effect, if any, the proposed change might have on the employee's team service delivery, and how such effects might be dealt with;
- state the date on which it is proposed the change will start;
- state whether and when a previous application has been made to the Council
- be signed and dated by the employee.

9. The Procedure For Considering An Application

The Regulations place a legal duty on the Council to consider and decide whether the requested work pattern can be accommodated within the needs of the business. The statutory procedure below should be followed in order to ensure the Council has fully explored the employee's application in accordance with the Regulations. (Please see Appendix 2 for a Flowchart Process summary).

The line manager should ensure that they have all the required information before acknowledging receipt of the application by completing, copying and returning the Application For Flexible Working Form to the employee. If the application is incomplete it should be returned to the employee asking them to resubmit the form once completed. The line manager should inform the employee that they will not be able to consider the application until it has been completed and re-submitted.

A meeting should be arranged between the employee and line manager within 28 days of the request being received, to discuss the request in greater depth and explore how this might best be accommodated. However, where the line manager agrees to the application and notifies the employee in writing within 28 days of the date of the application, no meeting is required to take place.

10. The Meeting

The line manager must ensure that the meeting is held at an appropriate time and place convenient to both parties. If it is difficult to arrange a meeting within 28 days of receipt of the application, then the line manager should seek the employee's agreement to extend the period. (See Section 15). Failure to hold a meeting within the 28 day period or any extension, without the employee's agreement, will be deemed as a breach of the procedure and could result in a formal complaint to an Employment Tribunal or ACAS arbitration.

If the employee fails to attend the arranged meeting without notification, they should contact their line manager as soon as possible to explain the reason for their absence, and to allow the line manager to rearrange the meeting to another mutually convenient time. If the employee fails to attend a meeting more than once without reasonable explanation the employer can treat the application as having being withdrawn. (See Section 16)

11. The Right To Be Accompanied

The employee is entitled, if they wish, to be accompanied at the meeting (and any further meetings) by another employee (this can include a Trade Union Representative who is also an employee). The companion can address the meeting, and confer with the employee during it, but they cannot answer questions for the employee. The employee is responsible for organising the companion and ensuring that they know the date and time of the meeting. If the companion cannot attend the initial meeting, the employee must seek to rearrange the meeting for a time more convenient to all parties. This should take place within 7 days of the date initially proposed for the meeting. If this cannot be achieved, the employee should consider an alternative companion who can attend the meeting. The companion is entitled to paid time off during work hours for these duties.

12. Getting The Most From The Meeting

The following are guidance notes that can be used by both parties to ensure that they explore all options during the meeting in order to reach a decision:

Line Manager

- Make a list or draft an agenda of the issues you want to discuss at the meeting.
- Inform the employee of anyone you have asked to join the meeting. This may include other members of the team upon whom any change in hours/ways of working may have an impact and may help you reach a decision.
- Familiarise yourself with this policy and with the different types of flexible working that the Council can offer, including seeking advice from Human Resources.
- Be prepared to discuss all options as an alternative arrangement may be agreeable.

Employee

- Be prepared to expand on any points within the application.
- Prepare to be flexible. You may be asked to consider alternative flexible working patterns, start dates or a trial period.
- Make sure any companion is fully briefed beforehand, providing them with any relevant information required, and ensure that your line manager is aware that a companion will be present.
- Familiarise yourself with this policy and any flexible working options that may be open to you.

13. Reaching A Decision

Once the meeting has taken place and the request has been discussed, the line manager must notify the employee of their decision in writing within 14 days of the date of the meeting.

Acceptance Of An Application

When accepting a request for flexible working the line manager must write an Application Acceptance Letter (Appendix 3) to the employee detailing the new working pattern; the date on which the new working pattern is to take effect from and be dated. A copy should be forwarded with a Contract Amendment Form to Human Resources, who will issue an amended Contract Of Employment.

Refusal of an Application

There will be circumstances where there are clear business grounds for an application to be refused. The acceptable business grounds for refusal must be one of those listed below:

- ❖ Planned structural changes.
- ❖ Burden of additional costs.
- ❖ Detrimental impact on quality.
- ❖ Inability to recruit additional staff.
- ❖ Detrimental impact on performance.
- ❖ Inability to reorganise work among existing staff.
- ❖ Detrimental effect on ability to meet customer demand.
- ❖ Lack of work during the periods the employee proposes to work.

Where the line manager feels that they are unable to accept the request for flexible working they must write an Application Rejection Letter (Appendix 4) to the employee stating which of the business reasons apply, explaining why the business reasons apply in the circumstances and setting out the appeal procedure and date the letter.

Although the line manager is required to give an explanation as to why the business reasons for rejection of the application apply in this circumstance, a lengthy and complex explanation covering each argument in fine detail is not needed and a couple of paragraphs should be sufficient in most cases. However any facts quoted in the explanation must be correct to ensure there is no basis of a complaint by the employee to an Employment Tribunal.

Extension of the 14 Day Period

If the line manager needs more time to make a decision, especially where more information is required to make a fully informed decision, they must obtain the agreement of the employee for an extension to the 14 days in which they are required to inform them of the decision following the meeting. (See Section 15).

14. The Appeals Procedure

If it is not possible to agree to a request for flexible working due to the Council's business needs the employee can exercise their right of appeal against the line manager's decision. The employee may, for example:-

- believe their request has not been properly considered
- want to challenge a fact given to explain why the business reason applies
- present information that wasn't available when the application was rejected

The employee needs to put their appeal in writing to the line manager, within 14 days of notification of the decision, including the grounds for the appeal and date the appeal letter.

An appeal meeting should then take place within 14 days of receipt of the written appeal from the employee. The appeal will be heard by the employee's immediate line manager, an independent Head of Service who has not been previously involved, and a Human Resources representative (if requested by the employee or the Head Of Service). The employee has the right to be accompanied at the appeal meeting, as at the previous meeting to discuss the request

Should the line manager agree to the request following the letter of appeal from the employee then an appeal meeting is not required to take place. The line manager will complete an Application Acceptance Letter (Appendix 3) within the 14 days following the employee's letter of appeal detailing the contract variation agreed to and stating the date on which the contract variation will take effect. A copy should be forwarded to Human Resources so that an amended Contract Of Employment can be issued prior to the date of any change.

Where a meeting is held to discuss an appeal, the Head Of Service will provide a written, dated decision within 14 days of the appeal meeting, either stating:

- i. agreement to the contract variation, what it is and the date from which the change will take effect or;
- ii. grounds for the decision relating to the dismissal of the appeal and why it applies in these circumstances.

The Appeal Reply Letter (Appendix 5) should be used by the Head Of Service for this purpose.

Note: Where a disputed request cannot be resolved between the employee and the Council, the employee has the right to make a complaint to an Employment Tribunal.

Where the employee fails to attend the appeal meeting, this should be handled in the same way as if the employee fails to attend the previous meeting to discuss the application. (See section 10)

15. Extension Of Time Limits

There are two circumstances where time limits can be extended:

1. Where the employee or line manager both agree to an extension, for example, to ensure an application can be fully explored and discussed: or
2. Where the line manager who is required to deal with the application is absent either due to leave or sickness absence.

The line manager and employee may agree to an extension of any time limits, however this must be confirmed by the line manager in writing stating:

- i. the period of the extension
- ii. the date on which the extension ends
- iii. be dated
- iv. be sent to the employee.

The Extension Of Time Limit Form (Appendix 6) should be used for this.

Where the line manager who would consider the application is absent due to leave or sickness, when the application is made, an automatic extension applies. The period the line manager has to arrange the meeting will commence on either the day of the line manager's return or 28 days after the application is made, whichever is the sooner. The Head Of Service will still need to acknowledge the application (See Section 9) and will need to ensure the employee is aware of the extension due to the line manager's absence, and for how long the extension may be for. If the line manager is likely to be absent for longer than is acceptable to the employee, and the employee agrees to discuss their application with another manager then the process should not be further delayed.

16. Withdrawal Of An Application

There are three reasons why an application can be treated as withdrawn. In all cases a written record must be kept, for which the Notice Of Withdrawal Form (Appendix 7) should be used by both employee and line manager.

- The employee decides to withdraw the application; or
- The employee fails to attend two meetings; or
- The employee unreasonably refuses to provide the employer with the required information.

The Employee Withdraws Their Application

An employee who withdraws their application must do so in writing (See Notice Of Withdrawal Form – Appendix 7) and will not be eligible to make another application for 12 months from the date the application was made. If the line manager only receives a verbal application withdrawal they should contact the employee and ensure they confirm their intentions in writing. If written confirmation is not received the line manager should confirm the withdrawal in writing using the confirmation section of the Notice of Withdrawal Form (Appendix 7).

The Employee Fails To Attend Two Meetings

In cases where the employee misses two meetings without reasonable cause, the line manager may treat the application as withdrawn. Therefore it is important that the employee should inform the line manager of the reasons why they were unable to attend the meeting as soon as possible, if they wish their application to proceed.

The Employee Unreasonably Refuses To Provide The Line Manager With The Required Information

There may be occasions where the Council is willing to accept a request for flexible working but requires further information from the employee before making any definite decision, and the employee refuses to provide such information. The line manager can then treat the application as withdrawn.

17. Unresolved Applications

It is hoped that most applications can be concluded with a satisfactory outcome, but where this is not possible, the employee may wish to involve a third party as follows:

- Informal discussion with their line manager;
- Using the Council's Complaints Procedure;
- External mediation or conciliation e.g. ACAS official
- Employment Tribunal or the ACAS Arbitration Scheme.

In the first instance it is usually in the interests of both parties to try and resolve the application within the workplace, where this can be the most effective and timely means of resolution, especially as the problem may be a simple misunderstanding or something that is easily rectified.

If the matter still cannot be resolved, and the employee does not wish to pursue a formal approach by using an Employment Tribunal then third party mediation/conciliation can be used.

The employee can only pursue the complaint through an external body, either an Employment Tribunal or through the ACAS Arbitration Scheme if:

- The Council has failed to follow the procedure correctly; or
- The decision by the line manager to reject an application was based on incorrect facts.

The employee has no right to make a complaint where they simply disagree with the business grounds provided for declining a request.

18. Protection From Detriment And Dismissal

The employee has the right not to be subjected to any detriment or dismissal by any act or any deliberate failure to act, in exercising or seeking to exercise their rights for flexible working under this regulation, or for accompanying or seeking to accompany an employee pursuing a request for flexible working under the Regulation.

The protection against dismissal also applies if an employee is selected for redundancy on these grounds.

19. Other Family Friendly Leave Arrangements

For eligible employees, the Council has other family friendly policies that can be used either in addition to or as an alternative to this policy. These include maternity leave, paternity leave, adoption leave, parental leave, time off for dependants, compassionate leave, and special leave. For more information please contact Human Resources.

Flexible Working Application Form**GUIDANCE NOTES FOR EMPLOYEE**

You can use this form to make an application to work flexibly under the right provided in law to help eligible employees care for their children or an adult. Before completing this form, you should ensure that you meet the eligibility requirements for making a request.

You should be aware that this application may take up to 14 weeks to process, and possibly longer, and therefore you should ensure that you submit this application to your Head Of Service well in advance of the date you wish the request to take effect.

If you are thinking about making a request for flexible working during a period of maternity leave, so that you can commence this upon your return from maternity leave, it would be helpful to mention this to your Head Of Service/line manager prior to beginning maternity leave, although you are not obliged to do so.

Please provide as much information as you can about your desired work pattern. It is important that you complete all the questions to ensure your application is valid. When completing sections 3 and 4, think about what effect your change in work pattern will have both on the work you do and on your colleagues. Once you have completed the form you should forward it immediately to your Head of Service (you may want to keep a copy for your records). Your manager will have 28 days after receipt of the application to consider the request and to arrange a meeting with you to discuss the request. The manager will then write confirming the outcome of the meeting, and any further detail as required.

NOTE TO HEAD OF SERVICE/LINE MANAGER

This is a formal application made under the legal right to apply for flexible working and the duty is made upon you, as the nominated line manager, to consider this application seriously on behalf of the Council. You will have 28 days from the date of receipt of the application in which to either agree to the request or to arrange a meeting with the employee to discuss their request. You should confirm receipt of this application by signing and returning a copy of the application to the employee. Further forms have been designed to help you respond appropriately to this application but you should ensure that you have read and fully understood the policy prior to any further correspondence with the employee.

Flexible Working Application Form

1. Personal Details	
Employee Name:	
Line Manager:	
Department:	

I would like to apply to work a flexible working pattern that is different to my current working pattern under my right provided under section 80F of the Employment Rights Act 1996. I confirm that I meet all of the eligibility requirements detailed below:

Either

- I have responsibility for the upbringing of either:
 - [] a child aged 16 and under or
 - [] a disabled child under 18 years of age.
- I am:
 - The mother, father, adopter, guardian, special guardian or foster parent of the child; or
 - Married to, or the partner or civil partner of, the child's mother, father, adopter, guardian, special guardian or foster parent of the child.
- I am making this request to help me care for the child
- I am making this request no later than two weeks before the child's 17th birthday (or the child's 18th birthday if the child is disabled)

Or

- I am, or expect to be, caring for an adult
- I am:
 - The spouse, partner, civil partner or relative of the adult in need of care; or
 - Not the spouse, partner, civil partner or relative of that adult, but live at the same address
- I am making this request to help me care for the adult in need of care

- I have worked continuously for the Council as an employee for 26 weeks prior to the date of this application.
- I have not made a request to work flexibly under this right during the last 12 months.

2a. Describe your current working pattern (days/hours/times worked):

2b. Describe the working pattern you would like to work in the future (days/hours/times worked):	
(please continue on a separate sheet if necessary)	
2c. I would like this working pattern to commence from:	Date:

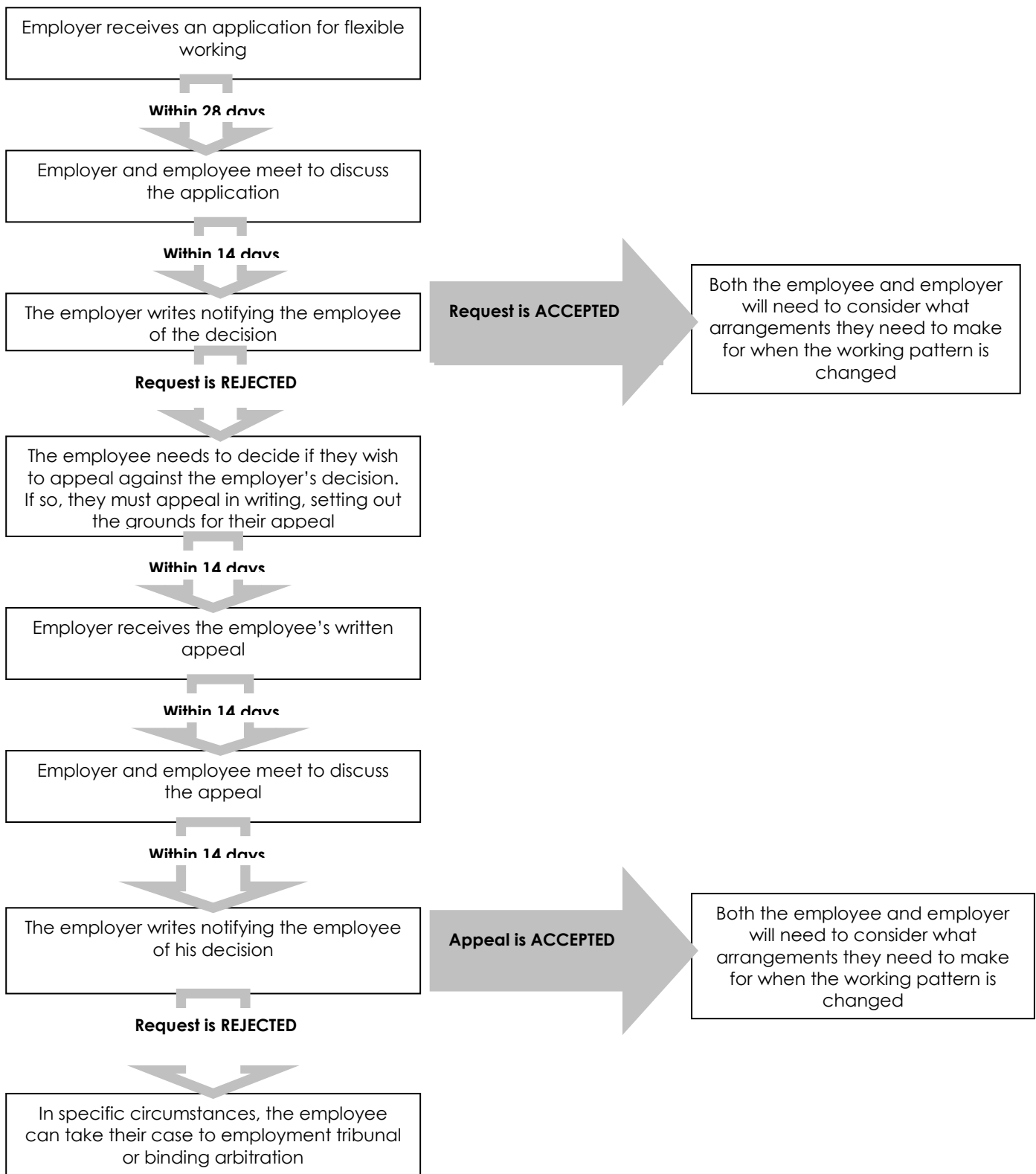
3. Impact of the new working pattern
I think this change in my working pattern will affect my employer and colleague(s) as follows:

4. Accommodating the new working pattern			
I think the effect of this new working pattern on the department and service provision can be dealt with as follows:			
Employee's Signature:		Date:	

**NOW PASS THIS APPLICATION TO YOUR HEAD OF SERVICE
(THEY WILL FORWARD THIS APPLICATION TO THE APPROPRIATE LINE MANAGER)**
LINE MANAGER: *Please sign, copy for your records and return to the employee immediately in order to confirm receipt of their application.*

Confirmation Of Receipt Of Application		
Dear:		
I confirm that I have received your request to change your work pattern on:		(Date of application receipt)
I shall be arranging a meeting to discuss your application within 28 days following this date. You might want to consider whether you would like a fellow colleague to accompany you at the meeting.		
Signed (Line Manager):		

Flexible Working Application Process and Timescales



APPLICATION ACCEPTANCE LETTER

Date

Dear **NAME**

Application For Flexible Working

Following receipt of your application and our meeting on **DATE**, I have considered your request for a new flexible working pattern and

**I am pleased to confirm that I am able to accommodate your application.*

**I am unable to accommodate your original request. However, I am able to offer the alternative work pattern which we discussed and you agreed would be suitable for you.*

Your new agreed hours of work/working pattern will be (Please give further full details).

This will commence from (**DATE**).

A copy of this letter will be forwarded to Human Resources who will issue an amended Contract of Employment to you. This will mean a permanent change to your terms and conditions of employment.

Should you have any queries regarding this matter please do not hesitate to contact me.

Yours sincerely

NAME
LINE MANAGER POSITION

c.c. Human Resources

APPLICATION REJECTION LETTER

Date

Dear **NAME**

Application For Flexible Working

Following receipt of your application and our meeting on **DATE**, I have considered your request for a new flexible working pattern and am sorry that I am unable to accommodate your request for the following business ground(s); **INSERT APPROPRIATE WORDING**

The grounds apply in these circumstances because: **INSERT APPROPRIATE WORDING**

(Note: You should explain why any of the work patterns discussed at the meeting are inappropriate).

If you are unhappy with the decision you may appeal against it. If you wish to appeal, you must write to **NAME (Head Of Service)**, setting out the grounds for your appeal, within 14 days of receiving this letter. An appeal meeting will then be held within 14 days of receipt of your appeal letter, and a decision made within a further 14 days following the appeals meeting.

You will be informed of the time, date and place of the appeal meeting by **NAME (Head Of Service)** and you should inform your companion (if required) of this. If this date and time is not suitable for your companion you should agree a new date and time, within 7 days of the original meeting, with **NAME (Head Of Service)**. Should this new date still be unsuitable for your companion you should seek an alternative companion. *(Please note that if you require a companion this should be an employee or a Trade Union Representative who is also an employee of the Council).*

Should you have any queries regarding this matter please do not hesitate to contact me.

Yours sincerely

NAME
LINE MANAGER POSITION

c.c. Human Resources

APPEAL REPLY LETTER

26 February 2003

Dear **NAME**

Application For Flexible Working

Following the meeting on **DATE**, I have considered your appeal against the decision to refuse your application to work a flexible working pattern and

*I accept your appeal against the decision and am therefore able to accommodate your original request to change your working pattern as follows: (Please give further full details).

This will commence from (**DATE**).

A copy of this letter will be forwarded to Human Resources who will issue an amended Contract of Employment to you.

* I regret that I am unable to accommodate your appeal for the following business ground(s);
INSERT APPROPRIATE WORDING

The grounds apply in these circumstances because: **INSERT APPROPRIATE WORDING**

(Note: You should explain why any of the work patterns discussed at the meeting are inappropriate).

Should you have any queries regarding this matter please do not hesitate to contact me.

Yours sincerely

NAME
LINE MANAGER POSITION

c.c. Human Resources

EXTENSION OF TIME LIMITS FORM

Note To The Line Manager
This form should be completed when confirming agreement with your employee that you wish to extend a time limit for part of the procedure, from that set out in the regulations. You may extend the time limit for any part of the process, providing the employee agrees to the extension.

Dear:				
I wish to extend the amount of time that the regulations allow me to:				
Arrange a meeting to discuss your application (28 days)				
Notify you of my decision regarding your application (14 days)				
Arrange a meeting to discuss your appeal (14 days)				
Notify you of my decision regarding your appeal (14 days)				
I wish to extend the time limit to		days. This means I will have until		(date)
to complete the necessary action. I need this time for the following reason:-				
If you agree to this extension, please complete the slip below and return to me.				
Signed (Line Manager):			Date:	

NOW PASS THE APPLICATION TO YOUR EMPLOYEE.

Note To The Employee
To allow proper consideration of your request, the Council may wish to extend the permitted time limit for any part of the process. The Council will need your agreement to any extension of the time limit. If you agree to the above request, please complete the section below, copy and return to your Line Manager/Head of Service.

Please sign, copy and return to your Line Manager/Head of Service in order to confirm acceptance of this request.

Employee's Agreement To A Time Extension			
Dear:			
I accept your request to extend the amount of time to			
Signed (Employee):			Date:

NOTICE OF WITHDRAWAL FORM.

Note To The Employee

This form provides notification to your Line Manager that you wish to withdraw your application to work flexibly. Once you have withdrawn your application, you will not be able to make another application until 12 months from the date your original application was made.

Dear:			
I wish to withdraw my application to work flexibly which I submitted to you on			(Date)
I understand that I will not be able to make another application until 12 months after the above date.			
Signed (Employee)		Date:	

NOW RETURN THIS FORM TO YOUR LINE MANAGER.

Note To The Line Manager

Once your employee has completed this form and returned it to you, the application is considered as withdrawn and you are not required to give it any further consideration. You should complete the section below and return it to the employee to confirm receipt of the withdrawal notice.

Please sign, copy and return to your Line Manager/Head of Service to confirm acceptance of this request.

Council's Confirmation Of Withdrawal (to be completed and returned to the employee)

Dear:			
I confirm that I have received notice that you wish to withdraw your application for flexible working which you submitted to me on:-			(Date)
Under the right to apply, you will not be eligible to submit another application until 12 months after the above date.			
Signed (Line Manager):		Date:	