

HR104
July 2014
UNCLASSIFIED



Flexible Working

The Right to Request and the Duty to Consider

**A Guide for Managers and
Employees**

Table of Contents

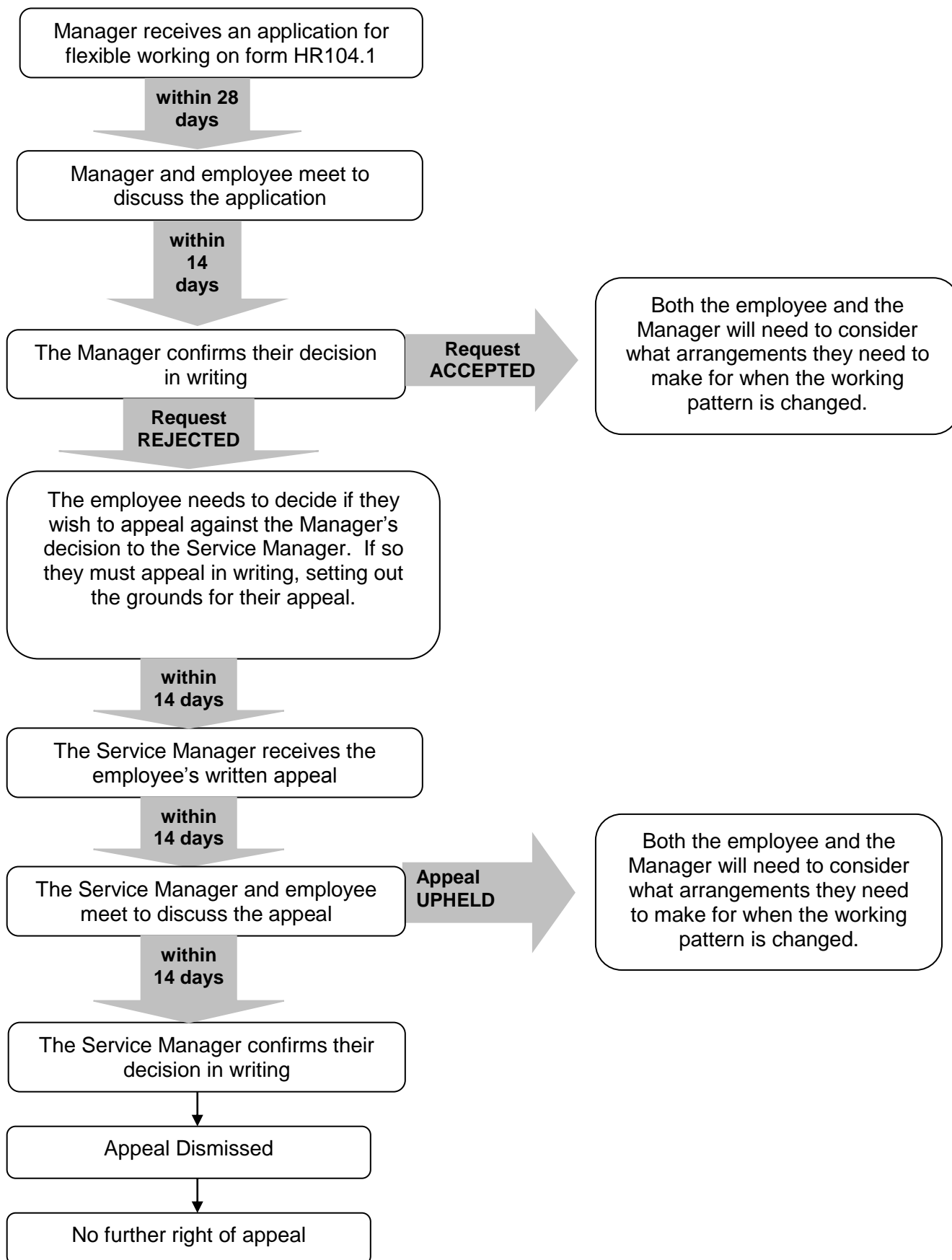
INTRODUCTION	3
SECTION 1 – How Does the Process Work?	4
SECTION 2 - Eligibility	6
SECTION 3 – Making an Application	7
SECTION 4 – Considering an Application	9
SECTION 5 – Considering a Request – Reaching a Decision	14
SECTION 6 – Exceptions to the Procedure and Withdrawals	20

INTRODUCTION

Any employee with 26 weeks continuous service can request to work flexibly.

This document provides guidelines for managers and employees on the right to request and the duty to consider flexible working under the statutory right.

SECTION 1 – How Does the Process Work?



1.1 Employees' Rights and Responsibilities

- To apply to work flexibly.
- To have their application considered properly in accordance with the set procedure and refused only where there is a clear service implication for doing so.
- To have a Trade Union Representative or a Work Colleague when meeting the Manager to discuss the application.
- Where an application is refused to have a written explanation explaining why.
- To appeal against the Manager's decision to refuse an application.
- To provide a carefully thought-out application.
- To ensure their application is valid by checking that all the eligibility criteria are met and that they have provided all the necessary information.
- To ensure the application is made well in advance of when they want it to take effect.
- To arrive at meetings on time and to be prepared to discuss their application in an open and constructive manner.
- If necessary, be prepared to be flexible themselves to reach an agreement with the Manager.

1.2 Managers' Rights and Responsibilities

- To reject an application when the desired working pattern cannot be accommodated within the needs of the service.
- To seek the employee's agreement to extend timescales where it is appropriate.
- To consider an application withdrawn in certain circumstances.
- To consider requests properly in accordance with the set procedure.
- To ensure they adhere to the time limits contained within the procedure.

- To provide the employee with appropriate support and information during the course of the application.
- To only decline a request where there is a recognised service implication and to explain to the employee in writing why it applies.
- To ensure that any variation with the procedure is agreed in advance with the employee and recorded in writing.

SECTION 2 - Eligibility

To make an application under the statutory right the employee will have to meet certain criteria. This section explains those criteria and the types of flexible working for which an employee might apply. An employee who does not meet the criteria will not be able to make a request under the statutory right.

2.1 Eligibility Checklist

To be eligible to make a request under this right, a person must:

- Be an employee.
- Have worked for SMBC continuously for 26 weeks at the date the application is made.
- Not have made another application to work flexibly under the right during the past 12 months.

2.2 How often can an application be made?

One application every 12 months can be made under the right. Each year runs from the date when the application was made.

2.3 What kind of changes can be applied for?

There is scope to apply for a wide variety of different types of working pattern. Eligible employees can request to:

- Change the hours they work;
- Change the times when they are required to work; or
- Work from home (whether for all or part of the week).

A request may be as simple as asking to start half an hour later than usual to allow the employee to drop their child off at school, or it may be a bigger change to their hours.

Flexible working actually incorporates a wide variety of working practices. A flexible working arrangement can be any working pattern other than the normal working pattern. Most people are familiar with working part-time for pro-rated pay or working different shift patterns.

SECTION 3 – Making an Application

An employee's application should set out their desired working pattern and arguments why it can be implemented. The initial onus is therefore on the employee to provide a written application to their Manager well in advance of when the change is to take effect. This section explains the information that must be included for an application to be valid and the issues that the employee will want to consider in preparing their application.

3.1 Application Checklist

An application under the statutory procedure must:

- Be in writing, using form [HR104.1](#)
- State the application is being made under the statutory right to request a flexible working pattern.
- Explain what effect, if any, they think the proposed change would have on the service and how, in their opinion, any such effect might be dealt with.
- Specify the flexible working pattern applied for.
- State the date on which it is proposed the change should become effective.
- State whether a previous application has been made to their Manager and, if so when it was made.
- Be dated.

Please obtain a copy of [HR104.1 Flexible Working Application](#) from HR Service Centre.

3.2 What impact will a successful request for flexible working have on the service area?

The application provides the employee with the opportunity to set out the reasons why their preferred working pattern is compatible with the needs of the service, as far as they are able to tell. It must, therefore, provide an explanation of what effect, if any, the employee thinks the proposed change would have on the service and how they feel any such effect might be dealt with. For example, the employee may argue that arriving half an hour later will have minimal impact on the service as this is the quietest time of the day and they can make up the time during the lunch period when it is far busier. Evidence shows that applications for flexible working patterns succeed where they are soundly based on the service needs of the Council.

3.3 Will the change of working pattern be permanent?

Any request that is made and accepted under the statutory right will normally be a **permanent** change to the employees contractual terms and conditions. The employee has no right to revert back to the previous working pattern. (Unless otherwise agreed). So, for example, if an employee's new flexible working pattern involves working reduced hours, he or she has no right to revert to working the hours he or she previously worked, although this is not to say that a manager will automatically reject a subsequent request to do so.

3.4 Points to bear in mind when making an application

Below details suggestions of things for employees to bear in mind when making an application, which can help their Manager to consider their request

- A new working pattern will normally be a permanent change unless otherwise agreed. So employees should think carefully about their request, as they have no right to revert back to their former hours of work. If in doubt, employees might want to consider with their manager whether a trial period would be helpful.
- Think about the date employees would like the new working pattern to begin. Be aware that the process can take up to 14 weeks to complete, and sometimes longer where a problem arises. The more notice employees give, the more likely they will be able to implement the change when they want it.
- Employees who request a flexible working pattern that will result in working fewer hours, must remember their pay will reduce too.
- It is to the employee's advantage to provide as much detail as possible about the pattern they would like to work and why.

- Employees should take time to consider how their colleagues will manage if their working pattern is changed. If they have any colleagues or friends who are already working flexibly, they can ask them about their experiences.
- Employees should think about what effect changing their working pattern will have on their job. They should aim to show in their application that their plans will not harm the service and may, in fact, enhance it. It may mean that they are available to provide extra cover at peak hours, thereby improving customer service.
- Employees should think about how any potential problems their plans may present to their Manager could be overcome and ensure that they include these in their application. For example, it may mean that they will not be in work when the service is provided. What effect will this have on the service, and how could it be managed?
- Check who will consider their application and ensure that they submit it to the appropriate person.
- If they are due to go on maternity leave think carefully about when to make their request. Employees might wish to mention to their Manager before they take leave that they are interested in applying to work flexibly on their return. Bear in mind that they may need to attend meetings with their Manager so that their request can be properly considered. If they want the changes to start on their return from maternity leave, they should make their application in good time.
- Employees may think a trial period might be useful, and they may wish to discuss this informally before initiating the formal procedure. They might then be able to agree to have a trial period before the time frame for the formal procedure starts running.

SECTION 4 – Considering an Application

The right places a legal duty on Managers to consider all applications and establish whether the desired work pattern can be accommodated within the needs of the service. This is demonstrated through following a set procedure. A flowchart summarising the procedure is included in Section 1. This section explains the first step in the process, which is to arrange a meeting to discuss the request with the employee.

The manager should consider each application objectively on this basis, and not attempt to judge whether one applicant's need for flexible working is greater than another's.

It may be possible for the manager to agree to a request to work flexibly simply on the basis of the application itself and, if so, he/she should write to the employee within 28 days, specifying the contract variation agreed to and the start date. Where this is not possible, however, there is a set procedure to be followed.

This section explains the first step in the process, which is to arrange a meeting to discuss the request with the employee.

Summary

The meeting

- A Manager must hold a meeting to consider the request within 28 days after the date an application is received.
- An employee can, if they wish, have a Trade Union representative or Work Colleague.
- The Manager must write to the employee informing them of their decision within 14 days after the date of the meeting.

The Trade Union Representative or Work Colleague

- An employee has the right to bring a Trade Union Representative or Work colleague to the meeting.
- The Work Colleague must be an employee of the Authority.
- The Trade Union representative/work colleague can address the meeting or confer with the employee during it.
- The Trade Union representative/work colleague is not allowed to answer questions on the employee's behalf.
- If the Trade Union representative/work colleague is unable to attend the meeting, the employee should re-arrange the meeting for a date within seven days of the originally proposed time, ensuring the new time is convenient to all parties; or, consider an alternative companion.

4.1 How should an application be submitted and received?

An application will be considered to have been made on the day that it was received by the Manager. For applications sent by e-mail or fax this is taken to be the day of transmission. For applications sent by post it means the day on which it would have been delivered in the ordinary course of post, unless shown to be otherwise.

4.2 How should an application be acknowledged?

It is best practice for the Manager to acknowledge receipt of the request.

4.3 What happens if the application is incomplete?

If an employee fails to provide all the required information as set out in **Section 3**, the Manager should inform the employee what they have omitted and ask them to re-submit the application when complete. The Manager should also inform the employee that they are not obliged to consider the application until it is complete and re-submitted.

If the employee unreasonably refuses to provide the manager with the information needed to assess whether the change should be agreed to, for example he or she has not described the desired future working pattern, the manager will be entitled to treat the application as withdrawn. The employee would not then be able to make another application under the statutory procedure for a further 12 months. It is therefore important for the employee to provide any appropriate information if requested.

4.4 What happens at the meeting?

Experience shows that the best way for both parties to understand each other's position and identify a solution that suits them both is to hold a face-to-face meeting to discuss the request. The legislation requires the Manager to arrange a meeting with the employee within 28 days after the application has been made. The meeting will provide both parties with the opportunity to discuss the desired work pattern in depth and consider how it might be accommodated. Both the Manager and the employee should themselves be prepared to be flexible. If the original working pattern cannot be accommodated, the meeting also provides an opportunity to see if an alternative working arrangement may be appropriate. It may also be in the Manager's and employee's interests to agree that the new working pattern will take place for an agreed trial period for, say, 12 weeks in order to see how it would suit them both.

In this case, the parties could agree to extend the time for a final decision to be given by the manager until the end of the trial period. To do so the manager should specify the period of extension and its end date in writing (dated) to the employee. The manager's final decision can then be given once they have tried out the new pattern. In some circumstances, the manager and employee may conclude that a permanent change to the latter's contract of employment is not the best solution: this might be the case, for example, where an employee is going to be caring for an adult who has a terminal illness or a fluctuating condition. A solution here might be an informal agreement

between manager and employee – outside the legislative framework – to flexible working for a limited period.

However informal the arrangement is, it is advisable to have it agreed in writing so that both employee and manager are clear about start and end dates, etc.

Alternatively, the employee and manager might agree under the formal procedure to a time – limited change after which the employee would revert back to the original working pattern. In this case, the employee would then have no right to make another request within a year.

4.5 How to ensure both parties get the most from the meeting

Manager

They might want to:

- Make a list or draft an agenda, of the issues they want to discuss at the meeting, e.g. if they are already aware that the request can be granted, they may want to discuss a suitable start date before formally accepting the request.
- Inform their employee of anyone they have asked to join the meeting.
- Ask their other employees if they would want to cover any extra hours that may be created as a result of granting the request.
- Speak to HR Service Centre on Ext : 3300 so that they are clear about their options.
- Familiarise themselves with this guidance and the different types of flexible working.

Employee

They should:

- Be prepared to expand on any points within their application.
- Prepare to be flexible. Their Manager may ask if there are any other working patterns they would be willing to consider or if they would consider another start date or a trial period.
- If they are taking a work colleague or a trade union representative along, make sure they are fully briefed on their request beforehand, provide them with a copy of their application, and inform their Manager that a work colleague or a trade union representative companion will be present. This will save time during the meeting.

- Familiarise themselves with this guidance and other sources of information on flexible working before the meeting.

The Manager must ensure that the meeting is held at an appropriate time and place that is convenient to both parties. In most cases, this will probably be the usual place of work, but again, both parties should be prepared to be flexible about this. For example, if the employee is a mother who is about to return to work from maternity leave, it may be that she will find it difficult to travel to her workplace. In such circumstances, discuss the meeting place with her and consider whether there is an easier place to meet.

If it is difficult to arrange a meeting within 28 days after the application was made at a time and place convenient to all parties then the Manager should seek the employee's agreement to extend the period. Failure to hold a meeting within the 28 day period or any extension, without the employee's agreement, will be a breach of the procedure.

4.6 Can an employee bring a Trade Union Representative or Work Colleague to the meeting?

The right allows an employee to be accompanied at the meeting by a Trade Union Representative or Work Colleague if they feel this would help them.

The role of the Trade Union Representative or Work Colleague is to support the employee. The Trade Union Representative or work colleague is able to address the meeting, and to confer with the employee during it, but may not answer questions for the employee. For example, if the employee has not attended many meetings before, it is possible that they may be nervous. The presence of a Trade Union Representative or Work Colleague can therefore make the meeting more productive for the Manager and the employee.

The employee should contact their Trade Union or work colleague as soon as they know the date of the meeting to ensure they are free. If the Trade Union Representative or work colleague is unable to make the initial meeting, the employee must seek to rearrange the meeting for a time convenient to themselves, the Manager and their Trade Union or work colleague. It should take place within seven days of the date of the initially proposed meeting. If this cannot be achieved, the employee should consider an alternative Trade Union Representative or work colleague who can attend the meeting.

4.7 What happens if the employee fails to attend this meeting?

An employee who fails to attend the meeting without notification should contact the Manager as soon as possible to explain their absence, and to allow the Manager to rearrange the meeting at the next mutually convenient time. The Manager whose employee fails to attend the meeting more than once and does not provide a reasonable explanation may treat the application as having been withdrawn. In such circumstances, the Manager should write to the employee confirming that the application was now considered withdrawn.

SECTION 5 – Considering a Request – Reaching a Decision

Once the Manager and the employee have discussed the request, the Manager must notify the employee of the decision in writing. Notification must take place within 14 days following the date of the meeting. This section describes the steps that need to be taken whether the application has been accepted, or has been rejected. An application may only be refused where the Manager has a clear reason for doing so. Acceptable reasons are listed in this section:

Summary

- The Manager must inform the employee of their decision in writing within 14 days after the day of the meeting.

If a request is accepted, the notification must:

- Include a description of the new working pattern.
- State the date from which the new working pattern is to take effect.
- Be dated.

If a request is rejected, the notification must:

- State the service implication(s) for refusing the application.
- Provide a sufficient explanation as to why the business ground(s) for refusal applies in the circumstances.
- Provide details of the employee's right to appeal.
- Be dated.

5.1 How should an application be accepted?

When accepting a request the Manager must write to the employee:

- Detailing the new working pattern;
- Stating the date on which it will start, and
- Ensuring the notice is dated

5.2 How to action an accepted request

- Inform the HR Service Centre of the new working pattern.
- Check to see if the employee's pay needs amending.
- Check if all health and safety requirements have been satisfied. This might be particularly relevant where the employee is to work from home.
- Consider who else may need to be informed, including other colleagues.

5.3 What happens if the Manager needs more time to reach a final decision?

If the Manager needs more time to come to a decision, they must obtain the agreement of their employee for an extension to the 14 days in which to inform them of the decision following the meeting. In these circumstances the proposal for an extension is likely to be in the employee's interests and the employee should be open to such requests. For example, following the meeting the Manager is willing to agree to the request in principle but needs more time to look into certain aspects of the proposed new working pattern. This could occur where an alternative working pattern was identified during the meeting. In such circumstances, the Manager will need to agree with the employee an extension of the time limit to deal with the request. This is covered more fully in Section 6.

Would a trial period help?

Trial periods can help both employees and managers because they provide an opportunity – without commitment – to test a particular working pattern to see if it works out to the satisfaction of both. An employee may, for example, be concerned about making what will be a permanent change to his or her contract of employment, while the manager might have concerns about the potential impact of the proposed change in the employee's working pattern on the service. A trial period of, say 12 weeks, will give both the employee and the manager a chance to find out whether the chosen pattern of working will really work out well in practice.

How would a trial period work in practice?

Trial periods can potentially happen at two stages before a formal agreement is reached:

- Firstly, the manager could give informal agreement to a trial before a formal flexible working request has been made by the employee; if this happened, the formal procedure would still be available to the employee if they wished to use it at some stage in the future;
- Secondly, if a formal application is made, an extension of time for the manager to make a decision could be agreed and the trial period could happen before a final agreement takes place; in this case the rest of the formal procedure would still be available to the employee.

Would a temporary period of working flexibly be appropriate?

In some circumstances, particularly where caring for an adult is involved, a permanent change to an employee's contract of employment may not be the best solution for him/her. Where, for example, an employee suddenly becomes the carer of an adult with a terminal illness, the manager might consider that a temporary period of flexible working, agreed informally outside the formal procedure, might be appropriate. Alternatively the manager and employee might agree to a time-limited change after which they would revert back to the original pattern.

An informal temporary arrangement might also be more appropriate where the demands on an employee's time are unpredictable, for example if caring for someone with a fluctuating condition like Parkinson's Disease.

5.4 How should an application be declined?

There will always be circumstances where, due to the needs of the service, the Manager feels they are unable to accept a request. In all such circumstances, the Manager must in writing:

- State the ground(s) why the request cannot be accepted;
- Provide an explanation of why the reasons apply in the circumstances;
- Set out the appeal procedure; and
- Ensure the written notice is dated.

5.5 What is a ground?

An application can be refused only where there is a clear service implication. The ground(s) for refusing an application must be from one of the seven listed below.

Grounds for refusing a request

- Extra costs which will damage the business
- The work can't be reorganised among other staff
- People can't be recruited to do the work
- Flexible working will affect quality and performance
- The business won't be able to meet customer demand
- There's a lack of work to do during the proposed working time
- The business is planning changes to the workforce

5.6 How should the refusal be explained?

In addition to providing a specific ground for refusal the Manager must include an explanation about why the ground applies in the circumstances. Experience shows that an employee who understands why a reason is relevant will accept the outcome and be satisfied that their application has been considered seriously, despite being disappointed that their application has been refused. It also shows that the reverse is true, particularly if the explanation is not sufficient.

The explanation should include the key facts about why the ground applies. These should be accurate and clearly relevant to the authority's services. To prevent any uncertainty, the explanation should avoid the use of unfamiliar jargon and should be written in plain English.

An explanation of around two paragraphs will usually be sufficient, although the actual length of explanation necessary to demonstrate why the ground applies will differ depending on each individual case.

How to ensure that the explanation accompanying the ground(s) is sufficient

Double-check the explanation:

- Says why the ground is relevant and why the request cannot be accepted.
- Keeps to plain English and avoids the use of unfamiliar jargon.
- Includes relevant and accurate facts.
- Is not overly complex or unnecessarily long.

Any facts quoted in the explanation must be accurate. It is not a necessity for the Manager to provide the detail in the explanation, but they should ensure that they are able to back up any facts should they be subsequently disputed. A decision based on incorrect facts to reject an application would provide an employee with a basis to make a complaint to an employment tribunal.

A tribunal does not have the power to question the Manager's reasons for declining a request, but they will want to see evidence of any facts relied upon to reject the application and that the Manager had provided the employee with sufficient explanation as to why the ground applies to the application.

5.7 What happens at the appeal meeting?

It will never be possible for SMBC to agree to a new working pattern in every circumstance due to service needs of the Council. In such circumstances, the reasoning why the request cannot be accepted should be clear to the employee from the notice of the refusal, which must include the reason and an explanation. But there will be circumstances where the employee may believe that their request has not been properly considered and may want to appeal. The appeal procedure is summarised below.

Appealing the decision

- An employee has 14 days to appeal in writing after the date of notification of the Manager's decision.
- An employee can appeal to the Service Manager, and the appeal must be arranged within 14 days after receiving notice.
- The employee can be accompanied by a Trade Union Representative or Work Colleague.
- The Service Manager must inform the employee of the outcome of the appeal in writing within 14 days after the date of the meeting.

An employee must make their appeal in writing within 14 days after the date they receive written notice that their request has been rejected. When appealing against a refused request an employee will have to set out the grounds for making the appeal and ensure that it is dated.

There are no constraints on the grounds under which an employee can appeal. It may be that they wish to bring to the attention something the Manager may not have been aware of when they rejected the application, e.g., that another employee is now willing to cover the

hours the applicant no longer wishes to work; or it may be to challenge a fact the Manager has quoted to explain why the reason applies.

The Service Manager must arrange the appeal meeting within 14 days after receiving notification that the employee wishes to appeal. The employee can be accompanied by one companion. This is on the same basis as the meeting to discuss the request and detailed in Section 4.

The Service Manager must inform the employee of the outcome of the appeal within 14 days after the date of the meeting.

If the appeal is upheld the written decision must:

- Include a description of the new working pattern.
- State the date from which the new working pattern is to take effect; and
- Be dated.

If the appeal is dismissed the written decision must:

- State the grounds for the decision. These will be appropriate to the employee's own grounds for making the appeal.
- Provide an explanation as to why the grounds for refusal apply in the circumstances.
- The same principles apply as to what is a sufficient level of explanation at appeal as the amount of explanation that should be given following the initial decision; and
- Be dated.

A written notice of the appeal outcome constitutes the Service Managers final decision and is effectively the end of the formal procedure within the workplace.

5.8 What happens when the appeal meeting is missed?

The circumstances where the employee misses the appeal meeting should be handled in the same way as for an employee who misses the meeting to discuss the application, as described in Section 4. An employee who fails to attend the meeting without notification should contact the Manager as soon as possible to explain their absence. The Manager should rearrange the meeting at the next mutually convenient time. If an employee fails to attend a meeting more than once and does not provide a reasonable explanation the Manager may treat the application as having been withdrawn. In such circumstances, the Manager should write to the employee confirming that the application was now considered withdrawn.

SECTION 6 – Exceptions to the Procedure and Withdrawals

In the majority of cases, requests for flexible working will follow the procedure as laid out in the previous sections. However, there will be occasions where it is necessary to deviate from this to help reach a suitable outcome. This section outlines the potential exceptions to the procedure and when an application may be taken as withdrawn. In all circumstances it is essential that a written record is made.

6.1 Extension of time limits

There are two circumstances where the time limits as laid out in previous sections can be extended.

Through agreement by the Manager and the employee

There will be exceptional occasions when it is not possible to complete a particular part of the procedure within the specified time limit. For example, it might be that the employer requires extra time to speak to another employee who is on holiday, about whether they could work the hours left uncovered by the employee's requested working pattern; or the employee themselves may be going on leave and as such will not be able to attend a meeting within the time limit. Such extensions of time limits can only take place if they are agreed by both the Manager and the employee. The Manager must make a written record of the agreement.

The written record of the agreement must:

- Specify what period the extension relates to;

Specify the date on which the extension is to end;

- Be dated; and
- Sent to the employee.

Through the Manager's absence

Where an application is sent to the Manager who will deal with the application and the Manager is absent from work due to leave or illness, an automatic extension applies. The period in which the Manager has to arrange the meeting will commence either on the day of the Manager's return or 28 days after the application is made, whichever is the sooner. On a Manager's return it will be best practice to acknowledge receipt of the application so the employee is aware that the extension has applied and the period when they can expect to meet their Manager to discuss the request.

There are no other circumstances where an automatic extension to any period applies.

6.2 When can an application be treated as withdrawn?

There will also be occasions when an application is treated as withdrawn. In all circumstances a written record must be made.

There are three reasons why an application may be treated as withdrawn:

The employee decides to withdraw the application

An employee who withdraws their application will not be eligible to make another application for 12 months from the date their application was made. This will, therefore, be a factor the employee will want to bear in mind when considering withdrawing their application. Where the employee decides to withdraw their application, they should notify their Manager as soon as possible and in writing. This is essential to avoid any misunderstandings.

A Manager who is informed verbally that the application is withdrawn by the employee and does not subsequently receive written confirmation should contact the employee to confirm their intentions. Where the Manager does not receive confirmation from the employee, the Manager should confirm the withdrawal in writing.

The employee fails to attend two meetings

In cases where an employee misses two meetings without reasonable cause, the Manager may treat the application as withdrawn. It is therefore in the employee's best interests to inform their Manager as soon as possible if and why they are not able to attend a meeting. For example, if an employee misses a meeting for a reason such as their child falling ill and informs the Manager straight away, the Manager should treat this sympathetically. However, if an employee simply misses a meeting and does not explain why, then they can expect their absence to be treated less sympathetically. The Manager should warn the employee that they risk their application being treated as withdrawn if they miss another meeting without reasonable cause when rearranging the meeting.

The employee unreasonably refuses to provide the Manager with the required information

There may be occasions where the Manager is willing to accept a request for flexible working, but requires the employee to provide them with certain information before they can do so. If an employee unreasonably refuses to provide the Manager with the information, then

the Manager can treat the application as withdrawn. For example, an office worker may request to work from home three days a week and the Manager may wish to ensure their working space meets health and safety standards. If the employee refuses to comply with this, the Manager may treat the application as withdrawn.

However, managers should be aware that employees have a statutory right not to be subjected to detriment or dismissed for making (or proposing to make) an application for flexible working under the statutory procedure, for exercising (or proposing to exercise) a right under the statutory procedure, for bringing proceedings against the Council or for alleging the existence of any circumstance which would constitute grounds for bringing proceedings under the statutory procedure.