

# ABERDARE COMMUNITY SCHOOL



## Right to Flexible Working Policy

Drafted  
**June 2014**

Revised on

.....

.....  
**Mrs. S. Davies**  
(Headteacher)

.....  
**Mr. A. Maddox**  
(Chair of Interim Governing Body)



## Right to Request Flexible Working Scheme School Based Staff

Date Created: September 2012

Review Date: April 2013

Agreed at RCT School staff joint  
consultative committee: 08 October 12

Responsible Officer: Ellen Williams /  
Bethan Davies

Telephone Contact: 01443 444538 /  
01443 444537



STRONG HERITAGE | STRONG FUTURE  
**RHONDDA CYNON TAF**  
TREFTADAETH GADARN | DYFODOL SICR

## CONTENTS

1. Introduction
2. Eligibility
3. The Procedure
4. Considering the Application
5. Right of Appeal
6. Time Limits
7. Employment Tribunal ACAS / Arbitration Scheme
8. Protection from Detriment and Dismissal

**Appendix 1 – Implications of flexible working for teaching staff**

**Appendix 2 – Flowchart of Process**

**Appendix 3 – Application Form**

**Appendix 4 – Procedure at Hearing**

# **THE RIGHT TO REQUEST FLEXIBLE WORKING SCHEME**

## **1. INTRODUCTION**

- 1.1 This policy relates to eligible employees who have the right to request a flexible working pattern (it does not provide an automatic right to work flexibly). It places a duty on the Governing Body to consider the requests seriously. This duty is contained in the Employment Act 2002.
- 1.2 The right to request to work flexibly applies to employees with children aged under sixteen or disabled children aged under eighteen and employees with carer responsibilities.
- 1.3 In drawing up the scheme, the Governing Body recognises that the scheme:
  - i) Contributes to mainstreaming equalities
  - ii) Ensures consistent application of the right to request flexible working across the Council
  - iii) Removes the potential for perceived discrimination
  - iv) Fulfils the requirements of the legislation

## **2. ELIGIBILITY**

- 2.1 The Right to Request Flexible Working Scheme is available to all employees of the School (excluding agency workers) who:
  - i) Have a child aged under sixteen, or a disabled child aged under eighteen
  - ii) Have responsibility for the upbringing of the child and will be making the application to enable them to care for the child
  - iii) Be either:-
    - The mother, father, adopter, guardian or foster parent of the child; or married to or the partner (including spouses or partners of the same sex) of the child's mother, father, adopter, guardian or foster parent.
  - iv) Are carers i.e. employees who care for or expect to care for an adult who:

- is married to, or the partner or civil partner of the employee
- is a near relative of the employee (this includes parents, parents-in-law, adult children, adopted adult children, siblings, in-law siblings, uncles, aunts, grandparents and step-relatives)
- falls into neither category but lives at the same address as the employee
- meets one of the above definitions and is making the application to help them with caring responsibilities

2.2 Employees must have worked for the School continuously for 26 weeks at the date the application is made.

2.3 Agency workers **are not eligible** under the scheme.

2.4 The scheme applies equally to male or female employees who are recognised as having responsibility for the upbringing of a child, or a caring responsibility for an adult and meet the criteria in point 2.1

**N.B The above criteria meets current legislation, however the Governing Body has the discretion to consider all applications for flexible working, even if the above conditions are not met.**

## 2.5 Applications

2.5.1 One application a year can be made under the right to request flexible working. Each year runs from the date when the application was made.

2.5.2 An application may be made no later than two weeks before the child's 16th birthday or 18<sup>th</sup> birthday if the child is disabled.

2.5.3 An application can only be made in order to help an employee to care for the child or to help the employee to undertake adult carer **responsibilities**. **Applications cannot be made for any other purpose.**

## **2.6 Successful Applications**

2.6.1 Successful applications will be treated as a **permanent** change to the employee's contractual terms and conditions (unless otherwise agreed). The employee has **no right to revert back to the previous working pattern.**

2.6.2 Successful applicants will remain on current terms and conditions until the date agreed for the commencement of the change.

## **2.7 Unsuccessful Applications**

2.7.1 An application can be refused only where there is a clear business reason. The business ground(s) for refusing an application must be from one or more of those listed below:

- i) Burden of additional costs
- ii) Detrimental effect on the ability to meet customer demand
- iii) Inability to reorganise work among existing staff
- iv) Inability to recruit additional staff
- v) Detrimental impact on quality
- vi) Detrimental impact on performance
- vii) Insufficiency of work during the periods the employee proposes to work
- vii) Planned structural changes

## **3. THE PROCEDURE**

3.1 An application must be dated and made in writing, to the Headteacher, no later than two weeks before the child's sixteenth birthday or eighteenth birthday in the case of a disabled child.

3.2 The onus will be on the employee to make a considered application explaining:

- i) How they meet the criteria as to the relationship with the child;

- ii) The application is made under the statutory right to request a flexible working pattern;
- iii) The flexible working pattern applied for and proposed commencement date;
- iv) The effect, if any, the employee thinks the change will have and how any such effect will be dealt with;
- v) Whether a previous application has been made and, if so, when it was made.

3.3 An accepted application will mean a permanent change to the employee's terms and conditions of employment. However, the Headteacher/Governing Body can consider a temporary reduction over a 12 month period following which any further application will be a permanent arrangement. The applicant must be clear that they will not be able to automatically revert to their full time position. He/she will have to wait for a vacancy to arise in the school and be appointed to that position by the Governing Body.

#### **4 CONSIDERING THE APPLICATION**

4.1 Within 14 days of receipt of the application the Headteacher plus an officer from Human Resources will meet with the employee to explore the desired work pattern in depth and to discuss how best it might be accommodated or to consider other alternatives. The employee will have the right to be accompanied to this meeting by their union representative or work colleague. In the spirit of reaching a decision which is suitable to both parties, the Head teacher should consider alternative proposals put forward by the employee/representative.

4.2 A meeting of the Grievance Committee will be convened within the 28 day period from application to consider the proposals of the Headteacher and employee. The Human Resources Officer will also be in attendance. The employee will have the right to be accompanied to this meeting by their union representative or work colleague. It will be the responsibility of the committee members to agree or reject the application.

4.3 Within 14 days of the date of the committee meeting the Human Resources Officer will write to the employee, on behalf of the Governing Body, to either agree to a new work pattern with a proposed start date or to provide clear business grounds as to

why the application cannot be accepted, the reasons why they apply in the circumstances and to set out the appeal procedure (See appendix two for a flowchart of the procedure)

4.4 An application may only be refused on one or more of the following grounds:

- i) Burden of additional costs;
- ii) Detrimental effect on ability to meet customer demand;
- iii) Inability to reorganise work amongst existing staff;
- iv) Inability to recruit additional staff;
- v) Detrimental impact on quality or performance;
- vi) Insufficiency of work during the periods the employee proposes to work;
- vii) Planned structural changes.

## **5. RIGHT OF APPEAL**

5.1 The employee has 14 days after being notified of the decision of the committee to appeal in writing to Human Resources. The employee will be required to set out their grounds of appeal.

5.2 Within 14 days of receipt of a letter of appeal the Grievance Appeals Committee will meet. The employee will have the right to be accompanied to this meeting by their union representative or work colleague. Human Resources will also be in attendance.

5.3 The Human Resources Officer will inform the employee of the decision within 14 days of the appeal meeting and, if the appeal is refused, give sufficient reason as to why. There will be no further right of appeal.

5.4 Should an employee have concerns about the manner in which their application or the appeal process was concluded they may refer their concerns to the Director of Education and Lifelong Learning.

## 6. **TIME LIMITS**

- 6.1. The statutory regulations on flexible working provide for strict timescales by which each stage of the process is carried out. These timescales have been identified throughout this policy.
- 6.2. Time limits will automatically be extended where the persons who would ordinarily consider the application are unavailable when the application is received e.g. because of school closure periods or sick leave, In instances of extended absence every effort will be made to ensure that any extension of time scales is not prolonged and unreasonable.
- 6.3. In addition, where there is good reason to extend the above time limits, e.g. to explore an alternative working pattern, this may be done with the employee's agreement and confirmed in writing.

## 7. **EMPLOYMENT TRIBUNAL / ACAS ARBITRATION SCHEME**

### 7.1 **Employment Tribunal**

- 7.1.1 An employee can pursue a claim before an employment tribunal on the grounds that the
- i) Employer has failed to follow the procedure properly
  - ii) A decision by their employer to reject their request for flexible working was based on incorrect information. In this case the full procedure (including appeal) must have been completed before a claim to an employment tribunal can be registered.
  - iii) A claim must be registered within three months of the decision.

### 7.2 **ACAS Arbitration Scheme for Flexible Working**

- 7.2.1 The ACAS Arbitration Scheme provides an alternative to pursuing a claim to an employment tribunal, which gives employees an alternative to having their complaint settled at tribunal.

7.2.2 Use of the scheme is entirely voluntary and both the employer and employee must agree to the dispute going to arbitration.

7.2.3 Where both parties agree to use the scheme the decision of the arbitrator is binding and the employee waives their right to go to an employment tribunal.

## **8. PROTECTION FROM DETRIMENT AND DISMISSAL**

8.1 An employee is protected against being subjected to detriment by any act or deliberate failure to act by their employer and it is unlawful for an employer to dismiss an employee because:

- i) Their application to work flexibly has been granted
- ii) They made an application to work flexibly under the right
- iii) They have made or have stated their intent to make a complaint to an employment tribunal in respect of their application to work flexibly

8.2 Detriment can cover a wide range of forms of unfair treatment, such as denial of promotion, facilities or training opportunities which the employer would otherwise have offered or made available.

8.3 Employees who suffer unfair treatment at work for the above reasons may make a complaint to an employment tribunal.

## APPENDIX ONE

### IMPLICATIONS OF FLEXIBLE WORKING FOR TEACHING STAFF

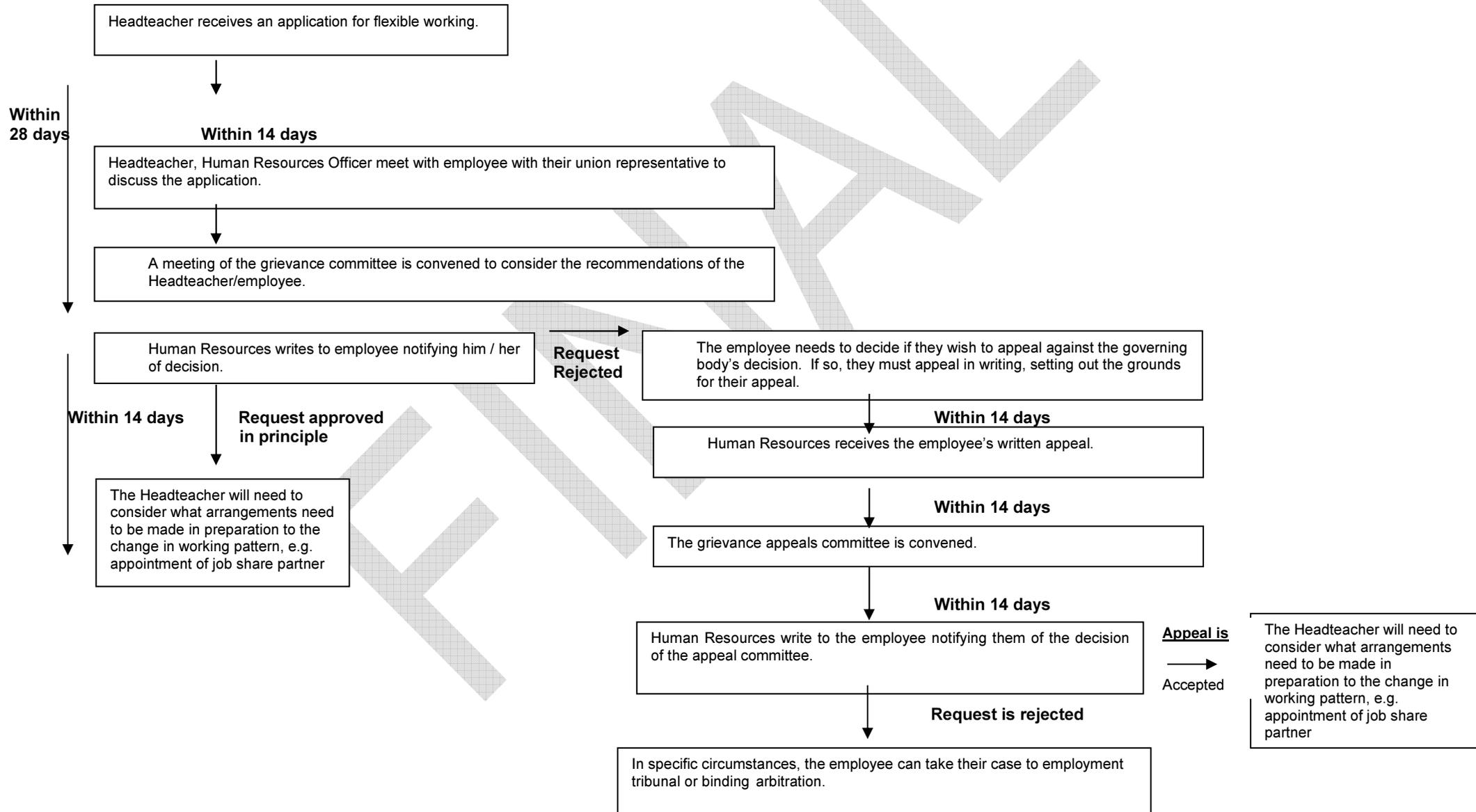
- **Work pattern** – There should be clear written specification of the work pattern. If there is a permanent change to the work pattern then this will need to be confirmed in writing and issued in consultation with Human Resources.
- **Alteration in work pattern** – if a temporary alteration in the work pattern is required to accommodate the needs of the school then at least one terms notice should be issued to the teacher concerned. Should a permanent alteration be required this can only be agreed by mutual consent. In the event that mutual agreement cannot be achieved the matter should be referred to the relevant committee of the Governing Body.
- **Inset days** – a full time teacher is required to teach 190 days of the year with five days allocated to in-service training. Depending on the work pattern agreed it is essential that the Headteacher ensure that each teacher working on a part time or job share arrangement has equal access to the pro rata training days. For example, a teacher working Monday to Wednesday will be entitled to attend three training days per academic year. In planning the training days the Headteacher should in discussion with the teacher concerned ensure that he/she has the opportunity to attend three training days. This arrangement is made easier if the inset days are set at the commencement of the academic year as the teacher working a reduced week may need to alter their working pattern to accommodate his/her attendance on the most relevant training days. It is recommended that a minimum period of one terms notice be given to the teacher if an alteration in working days is required. Should the Headteacher feel that it is essential for the development of the teacher and the needs of the school that the teacher attend all five training days additional payment will need to be made for the days which fall outside the teachers contracted hours.

- **Parent evenings** – there may be a requirement that a teacher working a reduced week attend all parent evenings.
- **Communication** – job share arrangements rely on good communication. It is essential therefore to ensure that the contractual arrangement incorporates an opportunity for both parties to meet/share information on a regular basis. This will include planning, marking and an awareness of day-to-day issues in the classroom e.g. pupil discipline and behaviour.

EXAMPLE

# How does the process work?

## APPENDIX TWO



**APPENDIX THREE**

**RHONDDA CYNON TAF COUNCIL**

**FLEXIBLE WORKING APPLICATION FORM**

Application made under the statutory right to request a flexible working pattern

1. Personal Details

Name:

Staff No:

Manager's Name:

Place of Work:

**Note on Eligibility:**

If you are a parent with a child aged under 16 or a disabled child under 18 or are considered a carer you have the right to apply to work flexibly. If you wish to apply for working arrangements that are different to your original contract you must seek agreement, as there is no automatic right to do so. You must be either:

- (i) The mother, father, adopter, guardian or foster parent of the child; or
- (ii) Married to or are the partner of the child's mother, father, adopter, guardian or foster parent.
- (iii) Care for or expect to care for an adult you are married to or the partner of or
- (iv) Care for or expect to care for an adult who is a near relative or lives at the same address.

If you do not meet all the criteria in section 2 below you do not qualify to make a request to work flexibly in law.

**2. I would like to apply to work a flexible working pattern that is different to my current working pattern.** I confirm I meet each of the eligibility criteria as follows:

My relationship with the child is that of e.g. mother, father:

I have or expect to have responsibility for the upbringing of a child under 16 or a disabled child under 18 (a disabled child is a child who is entitled to a disability living allowance).

\*Yes/No

I am making this request to help me care for the child.

\*Yes/No

This request is being made at least 2 weeks before the child's 16th birthday or, if disabled, the child's 18<sup>th</sup> birthday.

\*Yes/No

I am caring or expect to care for an adult I am married to, or the partner/civil partner of.

\*Yes/No

I am caring or expect to care for an adult who is a near relative as per policy.

\*Yes/No

I am caring or expect to care for an adult who lives at the same address.

\*Yes/No

I have been continuously employed for a period of at least 26 weeks.

\*Yes/No

I have not made a request to work flexibly under this right during the last 12 months whilst working in this current post

\*Yes/No

\* Delete as appropriate

**3. Please describe your current working pattern (days/ hours/ times worked):**

**4. Please describe the flexible working arrangement you are requesting.**

Note: You can request a change in the hours you work, a change to the times you are required to work and to your place of work. An accepted application will mean a permanent change to your working arrangements/ terms and conditions of employment, unless otherwise agreed.

(You may continue on a separate sheet if necessary)

I would like this working pattern to commence from:

Date:

Note: Please allow up to 3 months to consider your request before it can be implemented and possibly longer where difficulties arise.

**5. Impact of the new working pattern.** Please explain what effect, if any, you think the flexible working arrangement that you have requested will have on your employer and work colleagues.

**6. Accommodating the new working pattern.** Please explain how, in your opinion, this effect may be dealt with.

Signed:

Date:

**PASS THIS APPLICATION TO YOUR HEADTEACHER** and a copy to Human Resources for information.

CONFIDENTIAL

## APPENDIX FOUR

### Procedure at Committee Meeting

- 1/ Chair will introduce those present and confirm that the Committee will hear all information from management and staff member and make a decision on that information. The Chair will outline the procedure for the meeting as follows:
- 2/ **Management** will present their case.
- 3/ The staff member or representative and / or governors have the right to question management in order to clarify certain points.
- 4/ **The staff member or representative** will present their case.
- 5/ Questions may be asked by Management and / or Governors in order to clarify points.
- 6/ Summing up by both sides with no interruptions and no new evidence to be presented. Management will have the opportunity to sum up first With the staff member or representative summing up after.
- 7/ The Chair will advise the staff member that the decision will be made in writing within 14 days of the date of the meeting. If this is the first Committee meeting, the Chair will advise the staff member that they have a right of appeal. If this is the Appeals meeting, the staff member will be advised that this is the final stage of the process and they are unable to make a new application for 12 months.
- 8/ All parties to the **hearing** will then withdraw and the Committee will consider the **evidence** and reach a decision. The Human Resources Adviser present will provide advice, as requested, to assist the

Committee but will not be entitled to vote or have any role in the making of the decision.

- 9/ A detailed minute of the meeting will be taken on behalf of the Committee by Human Resources. Those minutes should be made available to both parties as soon as is practicable following the Hearing.

CONFIDENTIAL