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By Tony Dobbins

30 November 2021

Flexible working: Remote and hybrid work

Summary
1 Background
2 Remote working during Covid-19
3 Hybrid working
4 Flexible working: research on the pros and cons
5 Calls for reform
Further reading

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Summary

Coronavirus lockdowns in 2020 and 2021 meant many employers and employees were compelled to rapidly move to remote working. For many, this was their first sustained experience of homeworking. This briefing focuses on remote and hybrid work patterns in the context of the coronavirus pandemic and what this might mean for the future of work.

Flexible working refers to any type of working pattern that is different from the usual one. For the purposes of this briefing, it is a way of working that suits employees' needs, including working from home or having flexible start and finishing times.

Coronavirus and remote/hybrid working

The pandemic has generated greater appetite for remote and/or hybrid working patterns from employees. That said, individual employers and employees have different perspectives about remote and hybrid working patterns and returning to offices or place of work.

There are differences of opinion between those advocating a return to the office/normal place of work and those pushing for a more employee-oriented flexible post-Covid-19 future of work (including remote and hybrid patterns).

Calls for reform and what the law says

Under existing law, workers don't have a statutory right to flexible working, only a right to request it after 26 weeks of working for the same employer. However, the Government issued a consultation in September 2021, proposing to make flexible working requests a right for all workers from day one in employment.[1] [2]

Stakeholders like the Trades Union Congress (TUC) propose stronger reforms of flexible working rights for workers than presented by the Government; notably that flexible working should be a default "right to have" (employees should not have to request it). Other proposals include employees having a legal 'right to disconnect', which relates to worker's rights to disengage from

[1] Government Consultation, Making Flexible Working the Default, September 2021

[2] BEIS, Open consultation overview: making flexible working the default, 23 September 2021

work and work-related communications, such as emails, during non-work hours.

Mixed experiences among employees

Research shows that employees experience a mix of benefits and risks from remote or hybrid working patterns, depending on their circumstances.

There are often mixed outcomes, such as greater autonomy and discretion over work patterns coinciding with work intensification and the potential blurring of boundaries between work and life.

Greater consultation and negotiated agreement with workers and their representatives (trade unions or other forms of employee representation) are important to balance employer interests with employee needs. This is vital for creating cooperative employment relationships and mutual gains.

1 Background

Although flexible working has been a policy interest for many years, the pandemic brought it to mass public attention. The coronavirus outbreak created a compulsory mass transition to remote working patterns for many UK employees who were able to work from home.

1.1 Important questions for Parliament

In April 2021, the Parliamentary Office for Science and Technology (POST) published an article looking at the impact of remote and flexible working arrangements.[3] It concluded that flexible working could increase wellbeing and productivity, but benefits are not equally distributed throughout the population and could increase inequalities. It draws on academic research, some of which is outlined in section 4 below. The piece identifies important questions for Parliament:

- How are organisations supporting managers and employees, and what practical job design and remote working training has been offered? What equipment and resources have been offered to employees to support safe working from home?
- What are the most effective ways to support workers' health, safety and mental well-being when working from home or in a hybrid office-home arrangement?
- Following the pandemic, what flexible working arrangements do employees and employers want in the longer-term? How will this affect organisational culture and productivity? How can organisations ensure an inclusive hybrid working environment and parity of experiences for homeworkers and office workers in terms of development and promotion?
- What are the potential impacts for infrastructure (such as telecommunications and transport) of long-term increases in widespread working from home? What are the most effective ways to address data security and privacy concerns?
- What are the most effective strategies for preventing a widening of economic and social inequalities? What opportunities are there to narrow inequalities?

[3] POST, The impact of remote and flexible working arrangements, 29 April 2021

- How can governments promote investments in the physical and managerial capacity of firms and workers to work flexibly? How can governments address concerns for worker physical and mental health and well-being and inequality?

1.2 Current law and guidance on flexible working

Under existing UK legislation, employees do not have a statutory right to types of flexible working like homeworking, only a right to make a request.

At present, UK law states that employees can only request to work flexibly after 26 weeks of employment with the same employer, with a limit of one request every 12 months. This is set out in Part 8A of the Employment Rights Act 1996. Employees are protected from suffering a detriment or being dismissed because they make a flexible working request (Sections 47E and 104C).

However, in a consultation document issued in September 2021, the Government announced new proposals to make the right to request flexible working an entitlement from day one, for all employees. The purpose of the consultation is to seek the views of individuals and businesses on new proposals to reform flexible working regulations (also see Government proposals on flexible working in section 1.2 and calls for reform in section 5).

As originally framed, the legal right to request flexible working only applied to limited categories of employees with parental or caring responsibilities. Since then, successive Governments have extended the right. On 30 June 2014, Part 9 of the Children and Families Act 2014 extended it to all employees.

The Flexible Working Regulations 2014 deal with eligibility, applications and compensation relating to statutory applications make changes to a contract to allow flexible working under the Employment Rights Act 1996.

Code of practice

The right to request flexible working is supported by a statutory code of practice by the Advisory, Conciliation and Arbitration Service.[4]

The public body, Acas has also published guidance on the right to request flexible working. A request can relate to hours of work, time, or place of work, among other things. The right is to request a change to the terms and conditions of employment.

[4] Acas Code of Practice on flexible working requests (2014)

At present, an employer can reject a request for flexible working for various business reasons listed in the legislation under Part 8A, Section 80G of the Employment Rights Act 1996. [5] These include:

- Approving the request will lead to additional cost;
- Approving the request will impact on meeting customer demand;
- Inability to reorganise work among existing staff or recruit new staff;
- Approving the request will impact on quality or performance;
- Not enough work is available when the employee has requested to work;
- Approving the request will not fit with planned business reorganisation.

Acas has also issued advice on hybrid working to help employers consider whether this could be an option for their workplace and how to fairly introduce it.[6] The advice covers legal and practical issues associated with hybrid working and includes a section on supporting and managing staff.

European measures on teleworking

Some European countries have adopted measures to encourage flexible and remote working, which enables comparisons to be made with the UK.

In 2002, the EU social partners signed a voluntary framework agreement on teleworking (PDF, 300 KB). [7] [8] The agreement defined teleworking as allowing workers to work away from their place of work by using digital technology. The agreement called for various protections to apply during telework, including privacy, health and safety and protecting terms and conditions. It is a voluntary agreement between social partners and is not an EU law. Eurofound, an EU agency, has provided a helpful overview of the agreement.[9]

In the context of Covid-19, a few EU countries have taken steps to protect home workers. Research on teleworking across Europe by Eurofound (2021) provides links to various reports.

One Eurofound report, Regulations to address work–life balance in digital flexible working arrangements, noted that Spain had introduced comprehensive legislation to cover remote working. Austria introduced a

[5] Employment Rights Act, 1996, Part 8A, Section 80G

[6] Acas advice on hybrid working.

[7] Social partners include the European Trade Union Confederation, UEAPME and CEEP

[8] EU social partners framework agreement on teleworking, 16 July 2002

[9] Social partners sign telework accord, 22 July 2002

legal definition of 'home office' and Ireland introduced a code of practice on the right to disconnect (see below in Section 5.3).

Other countries, including Croatia, Germany, and Poland, were debating draft laws at the time Eurofound published in July 2020. Despite these reforms, Eurofound suggested that EU-wide regulation might be necessary to ensure common minimum standards to protect workers' health and safety. The main findings on teleworking in the EU are also summarised in a Eurofound blog post.[10]

1.3 Government policy on flexible working

Flexible Working Task Force

A Flexible Working Task Force was established by the Department for Business, Energy and Industrial Strategy (BEIS) in 2018. This was in response to then-Prime Minister Theresa May's call for businesses to enhance equality at work by advertising jobs as flexible from day one of employment.

The Task Force's membership includes business groups, trade unions, charities, and government departments. Further details of the Task Force are available on the CIPD website. [11] Its remit is to learn from working arrangements during the pandemic to develop policies and practices to support employers and workers to adapt to new ways of working.

BEIS minister, Paul Scully set two objectives:

- Understanding and supporting the change to 'hybrid' and other ways of working which are emerging because of the pandemic.
- Longer term, understanding whether there is more to be done to promote 'ad hoc' or 'non-contractual' flexible working.

In relation to hybrid working, the Government has requested the Task Force to provide advice and guidance to support employers who are considering adopting more remote or semi-remote (hybrid) working practices. [12]

Government commitments and consultation

The Conservative Party's 2019 manifesto included a commitment to encourage flexible working and consult on whether flexible working can be default, unless employers have good reasons otherwise.

[10] Eurofound, As Member States take different approaches to regulating telework, will the EU bring them into line? 31 May 2021

[11] CIPD, Flexible Working Task Force

[12] CIPD, Solving the Hybrid Working Challenge, 26 July 2021

In March 2021, the Minister for Women and Equalities, Liz Truss, called for flexible working to be normalised, saying it was in the interest of employers and employees to make flexible working standard.

The Government issued an open consultation in September 2021 on Making Flexible Working the Default.[13] The consultation seeks views from individuals and businesses on proposals to reform flexible working regulations (The Flexible Working Regulations 2014). These include:

- The right to make flexible working requests an entitlement from day one, for all employees, as noted in section 1.1 above.
- Whether the limit of one request for flexible working per year is still appropriate for balancing employee and business needs.
- Reducing the present three-month period employers have to consider requests.
- A range of flexible working patterns, not restricted to working from home, such as job-sharing, flexitime, compressed, annualised hours (employees work a certain number of hours per year rather than per week), and phased retirement.

The intention of the proposals is to allow employees to balance their work and home life, including childcare commitments and other caring roles. It also seeks to ensure that people who are under-represented in the workforce, such as new parents or disabled people, have better access to opportunities at work.

The consultation proposes that employers should offer alternatives if they cannot accommodate a specific request for flexible working. However, the consultation qualifies this, stating:

> there are some circumstances where businesses will not be able to offer flexible working. That's why the government is clear that they should still be able to reject a request if they have sound business reasons and will also respect freedom of contract rather than prescribing specific arrangements in legislation.

The consultation, which closes on 1 December 2021, covers broader issues the Government is considering encouraging and support flexible working. These include proposals from the July 2019 Good Work Plan: Proposals to support families consultation.

[13] Government Consultation, Making Flexible Working the Default, September 2021

2 Remote working during Covid-19

Employees in the UK do not have a statutory right to work from home. However, there was a sudden rapid increase in homeworking (for those who could work from home) from March 2020, after the Government implemented lockdown measures during the Covid-19 pandemic.

This section considers trends in and experiences of remote working during the pandemic. Remote and home working is also known as teleworking, especially in some European countries.

2.1 Lockdown and remote working

As cases of Covid-19 began rising across the UK in March 2020, the Government implemented a series of lockdowns and requested people to work from home where possible.

On March 23, 2020, the Government issued guidance requiring people to stay at home and away from others (social distancing). [14] For many, this was their first sustained experience of homeworking. In a YouGov survey on homeworking in September 2020 68% of YouGov survey respondents reported that they never worked from home before the pandemic. [15] However, many 'key workers' delivering essential goods and services could not work remotely.[16] Others were furloughed under the Coronavirus Job Retention Scheme.[17] The labour market has therefore been polarized regarding access to homeworking.

On 19 July 2021, the Government lifted the guidance that said people should work from home if they can; although there are caveats, especially for vulnerable people. This is detailed in the Library briefing: Coronavirus: Returning to work.[18]

[14] UK Gov, Guidance overview: Staying at home and away from others (social distancing), 23 March 2020
[15] YouGov, Most workers want to work from home after COVID-19, 22 September 2020
[16] ONS, Coronavirus and key workers in the UK, 15 May 2020
[17] House of Commons Library briefing, Coronavirus Job Retention Scheme: statistics , 6 July 2021
[18] House of Commons Library briefing, Coronavirus: Returning to work, 16 August 2021

2.2 Trends in remote working

This section tracks trends in remote working from before the pandemic in 2019 and during the pandemic (March 2020 to present). Data shows that remote working increased suddenly and rapidly from March 2020, before decreasing from March 2021 as more people returned to their normal place of work and the Government started relaxing public health restrictions.

Office for National Statistics (ONS) data indicates that the proportion of the workforce who did any work from home averaged 27% in 2019, but by 14-17 May 2020, 37% worked only from home, 29% travelled to work, and 8% did both (see Chart 1 below). Workers living in London were most likely to work at home, as well as those across the country? aged between 30 and 49.[19]

The ONS defines a homeworker as referring to anyone who did any working from home in the reference week.

Changes since March 2021

The proportion of people working remotely has been declining since March 2021, as restrictions began to ease. The ONS Opinions and Lifestyle Survey found that in September 2021, 17% of the working population surveyed had worked exclusively from home in the past seven days, 53% travelled to their normal place of work, and 12% did a hybrid of both working from home and travelling to work.

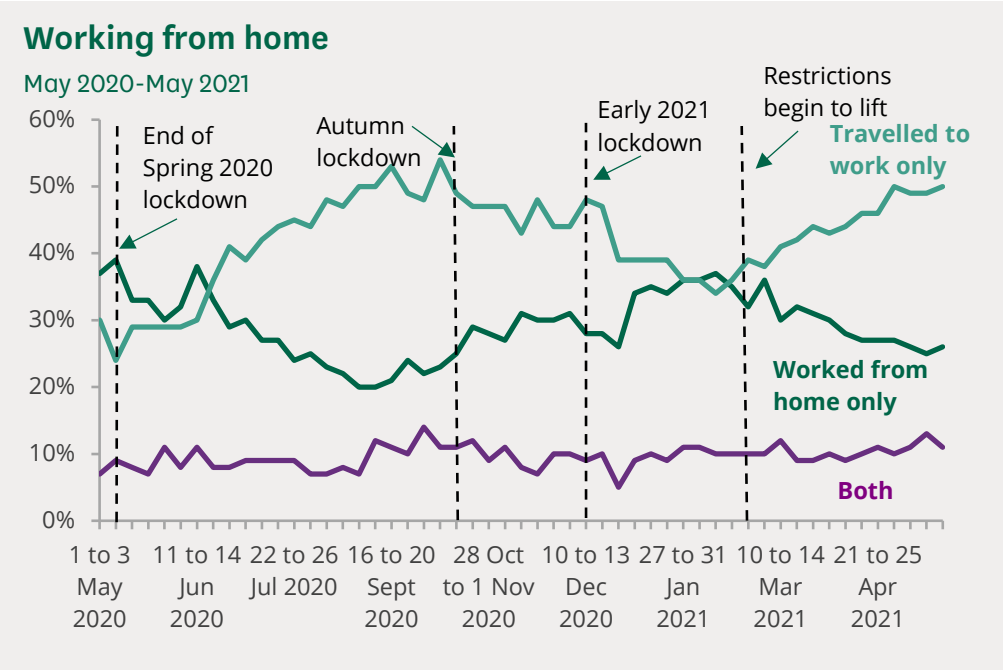
In addition, 18% didn't work from home or travel to work – this figure comprised people still on furlough or other reasons listed by the ONS, including being on sick and/or other leave or unable to work due to caring responsibilities.

This reduction in people exclusively working from home reflects gradual Government relaxation of coronavirus restrictions during 2021. However, HMRC statistics show that there were still 1.14 million staff on furlough on 30 September 2021 when the scheme ended.[20]

[19] ONS, Business and individual attitudes towards the future of homeworking, 14 June 2021

[20] Gov.uk, HMRC coronavirus (COVID-19) statistics

Chart 1



Source: ONS, Business and individual attitudes towards the future of homeworking, UK: April to May 2021

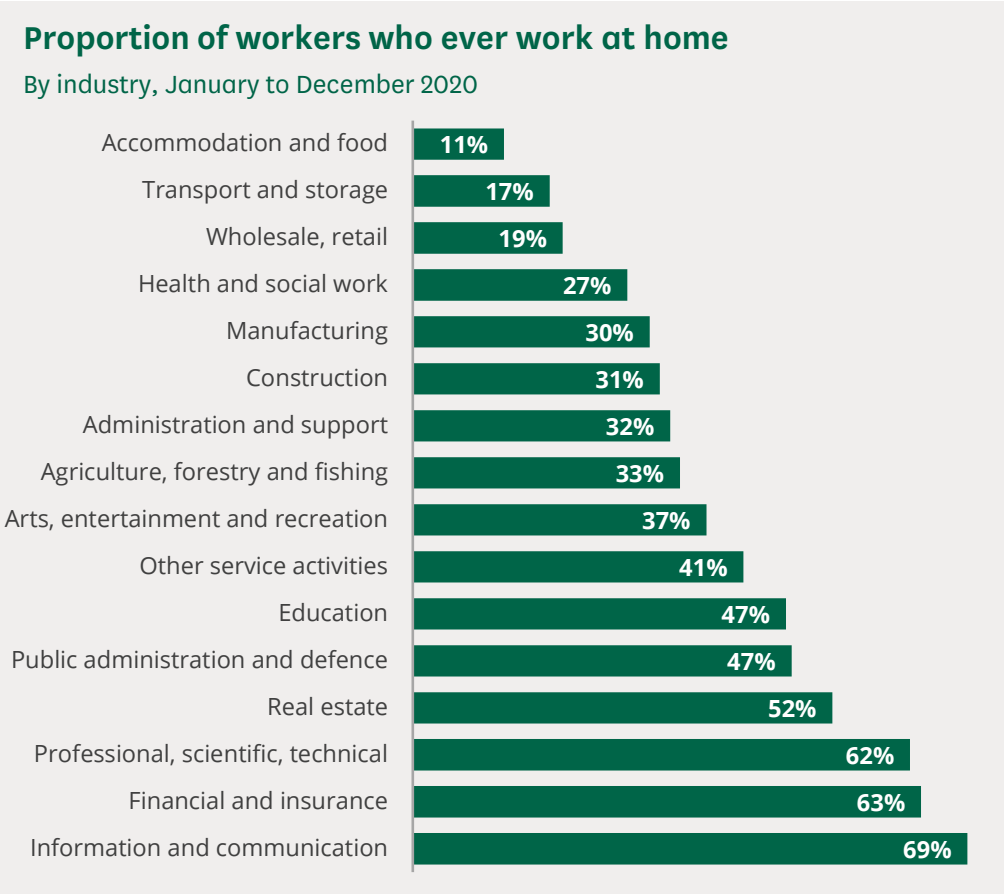
Industry variation

In 2020, working remotely was most frequent in information and communication fields (69%). This was followed by financial and insurance (63%) and professional, scientific, and technical activities industries (62%).

Remote working was lowest in sectors like accommodation and food services (11%); transportation and storage (17%); and retail (19%). In these industries, workers were more likely to be working at their normal place of work or on furlough. The reason for this is because it is harder to work remotely in these sectors. The sectors with the lowest rates of remote working tend to also have lower wages. [21]

[21] ONS, Which jobs can be done from home?, 21 July 2020

Chart 2



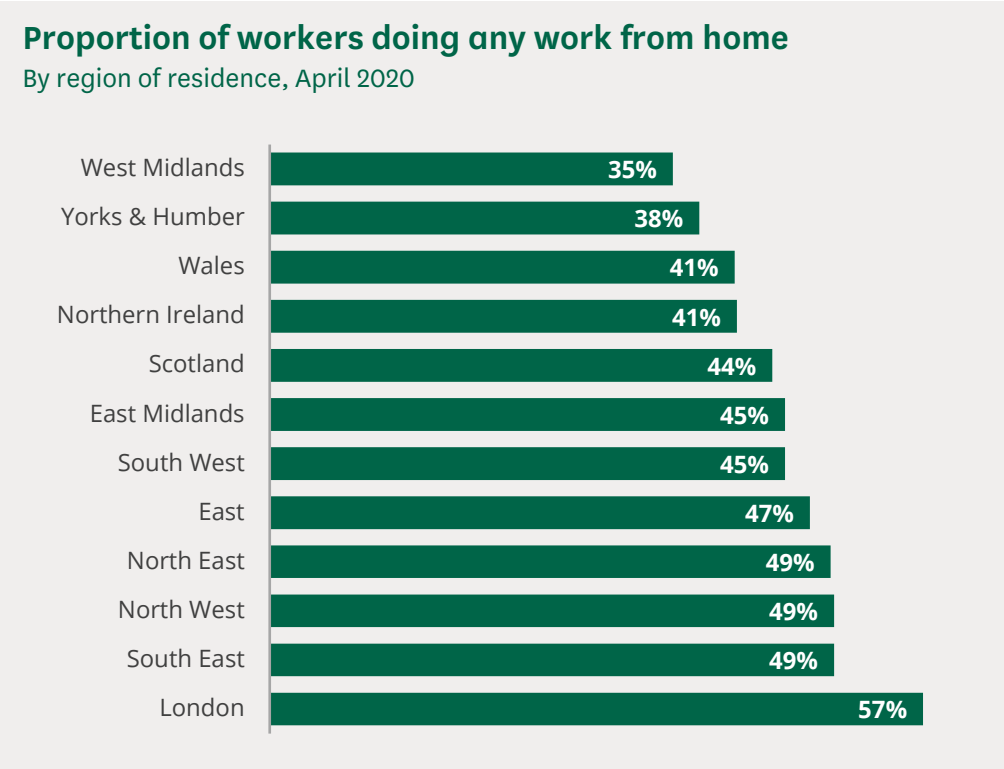
Source: ONS, Homeworking in the UK labour market, 17 May 2021

Remote working by region

ONS data also show regional differences in geographical access to remote working across the UK as of April 2020. For example, 57.2% of people in London have worked from home during the lockdown, compared with only 35.3% in the West Midlands. [22]

[22] ONS, Coronavirus and homeworking in the UK: April 2020

Chart 3



Source: ONS, Homeworking in the UK labour market, 17 May 2021

Future remote working intentions

Remote or homeworking is likely to remain an important aspect of post-pandemic employment. Nonetheless, survey evidence shows that employees are more likely to want to continue working from home in future, whereas their employers are less likely to favour homeworking in future.

YouGov's survey on homeworking in September 2020 found that a majority (57%) of employees in Great Britain want to continue working from home after the pandemic has abated. This includes 18% who want to be able to work from home exclusively, and 39% who want to work from home occasionally. Nearly four in ten (39%) say they don't want to work from home after the coronavirus recedes. [23]

Of those surveyed, 68% reported that they never worked from home before the pandemic. Less than a third had; 13% worked remotely all the time, and 19% occasionally.

Surveying employers shows a different picture. ONS data from the Business Insights and Conditions Survey (BICS) for April-May 2021 shows that 24% of businesses that had not permanently stopped trading intended to use

[23] YouGov, Most workers want to work from home after COVID-19, 22 September 2020

increased homeworking as a permanent business model in future. [24] Employers in the information and communication sector were most likely to intend to increase homeworking in future (49%). The employers least likely to want to increase remote working in the future were in the accommodation and food Services, at only 6%. [25]

While nearly two-fifths (38%) of employers expected 75% or more of their staff to be at their normal place of work in the future, a big proportion (36%) of employees working remotely at the time of the survey perceived that they would continue to do so most or all the time.

Finally, comparative research by Eurofound tracks trends in remote working (teleworking) in the EU during the pandemic, briefly summarised as follows:

- Teleworking increased in all EU countries, with over a third of those in employment starting remote working when the pandemic hit. In July 2020, nearly half of respondents worked remotely at least some of the time, while a third worked from home all the time.

- The number of teleworkers in spring 2021 fell as more workers returned to the office. Nonetheless, most employees across the EU would like to continue to work from home in future.[26]

2.3 Experiences of remote working

Remote working before and during the coronavirus

In April 2021, the ONS published a survey called Homeworking hours, rewards and opportunities in the UK: 2011 to 2020.[27] It compared experiences of homeworking both before and during the pandemic. The main findings were:

- Before 2020, employees who worked mainly at home were paid on average 6.8% less than non-homeworkers so experienced what the ONS call a 'wage penalty'. After Covid-19 arrived in 2020, employees who mainly worked from home were paid 9.2% more on average than non-homeworkers, mostly because they were better placed to continue working despite lockdown restrictions. In addition, a much larger number of higher paid employees moved to mainly working from home in 2020. Previous studies show employees in higher-paying jobs are more likely to be able to work from home. [28]

[24] ONS, Business and individual attitudes towards the future of homeworking, 14 June 2021

[25] ONS, Business and individual attitudes towards the future of homeworking, 14 June 2021

[26] Eurofound, Teleworking, 28 September 2021

[27] ONS, Homeworking hours, rewards and opportunities in the UK: 2011 to 2020, 19 April 2021

[28] ONS, Which jobs can be done from home? 21 July 2020

- Between 2011 and 2017, employees who mainly worked from home were much less likely to be promoted than non-homeworkers. Homeworkers may be overlooked for promotion and career progression due to less face-to-face interaction with managers and colleagues.

- Between 2011 and 2019, unpaid overtime was highest for people who had recently worked from home and this was also true during the pandemic. People who work from home did 6 hours of unpaid overtime on average per week in 2020, compared with 3.6 hours for those that never work from home.

- Homeworkers were more likely to work in the evenings in 2020 compared with those who did not. This reflects the fact that the working day of homeworkers is longer but more flexible than non-homeworkers – for example, later start times and more breaks, and not having to commute. In 2015, homeworkers were more likely to work outside of 'normal' office hours, notably evenings.

- Sickness absence for home workers was 0.9% on average in 2020, compared with 2.2% for non-homeworkers. This may be because homeworking reduced non-Covid-19 related causes of sickness related absence from the office/normal place of work. [29]

Benefits and costs of remote working experiences

This section outlines the experiences of remote working during the pandemic, identifying advantages and disadvantages for employees and employers, and noting which workers had access to home working.

Benefits and costs for workers

Respondents to the ONS' Opinions and Lifestyle survey reported advantages of homeworking like an improvement to work-life balance and a reduction in the time taken to complete work.[30] The Institute for Employment Studies reported that homeworkers have benefited from greater autonomy to organise their tasks, and discretion to make decisions about when they do their work. In these ways, working from home under lockdown has challenged assumptions around the need for office presence.[31]

ONS respondents noted disadvantages like finding it harder to collaborate with colleagues and fewer job opportunities. The Institute for Employment

[29] ONS, Sickness absence in the UK labour market: 2020, 3 March 2021

[30] ONS, Business and individual attitudes towards the future of homeworking, UK: April to May 2021, 14 June 2021

[31] Parry, J., Young, Z., Bevan, S., Veliziotis, M., Baruch, Y., Beigi, M., Bajorek, Z., Salter, E. and Tochia, C. Working from Home under COVID-19 lockdown: Transitions and tensions, Work after Lockdown, January 2021

Studies found that employees reported missing the sociability and benefits of collaboration in shared workspaces.

Some groups felt the costs more

The Institute for the Future of Work reported in 2020 that the risks and benefits of remote work fall asymmetrically between different groups of workers. Employees with caring roles are especially susceptible to risks like unpaid work and the blurring of work-life boundaries. [32]

Younger workers were less receptive to homeworking, with fewer ONS respondents aged between 16 and 29 reporting "improved work-life balance" or "completing work in a shorter time" than those over 30. They were also the only age group to report more distractions working from home.

Women were more likely than men to suggest homeworking facilitated fewer distractions and more time to complete work. Men were more likely to report better wellbeing.[33]

Not all workers can access homeworking

In June 2021, the Trades Union Congress (TUC) published a report on the future of flexible work[34]. It reveals an emerging class divide as some workers opt to keep working from home, whereas those who cannot work from home have little access to any forms of flexible working. It observes a significant divide in access to homeworking between higher-paid and low-paid occupations. The report reveals strong demand for other forms of flexible working from all groups of workers, such as control over working hours.

Benefits and costs for employers

According to the ONS, the most common reasons provided by employers intending to increase homeworking in future were better staff wellbeing, reduced costs, and higher productivity.[35]

A 2020 Chartered Institute for Personnel and Development (CIPD) report suggested that employers see benefits to homeworking like a better work–life balance, most notably the reduction in commuting time and cost for employees, having fewer distractions to complete tasks and better collaboration facilitated by technology. [36]

Nonetheless, even employers who see the benefits of homeworking recognise that some workers prefer to return to their usual place of work, because they

[32] Institute for the Future of Work, Spotlight report 4. Remote working and Covid-19. What is work and what is personal, August 2020

[33] ONS, Business and individual attitudes towards the future of homeworking, UK: April to May 2021, 14 June 2021

[34] TUC, The future of flexible work, 18 June 2021

[35] ONS, Business and individual attitudes towards the future of homeworking, UK: April to May 2021, 14 June 2021

[36] CIPD, Embedding new ways of working, September 2020

do not have adequate homeworking arrangements, or they miss social interaction. Moreover, some employers in the CIPD survey identify other challenges with homeworking, like problems with staff mental wellbeing, and opportunities for collaboration and line management – which they say could be addressed if staff came to the office at least occasionally. Such findings may partly explain why some employers foresee growth of partial homeworking (hybrid working) rather than exclusive homeworking. This is discussed in Section 3.

Policy and practice report recommendations

Two-way flexibility and consultation

Various stakeholders have published policy and practitioner reports that make recommendations on homeworking and other forms of flexible working. This includes calls by the TUC for greater trade union input into flexibility practices and policies, so that flexibility is less one-sided and involves greater consultation with union representatives.

The TUC report on the future of work calls for two-way flexibility (instead of one-sided flexibility imposed by employers) to be negotiated through collective bargaining and in consultation with trade unions to agree collective solutions to practical problems, in order to balance workers' and business needs. [37]

The Institute for the Future of Work (IFOW) report outlines some policy and practice recommendations/advice for employers. [38] More extensive consultation with worker representatives so that employees have choice and voice can play a key role in minimising the risks associated with flexible working, the report recommends. In addition, workers are wary about possible increases in remote automated monitoring and surveillance by management.

On a more positive note, the IFOW report also concludes that remote work may facilitate changes in the broader future of work context in beneficial ways and has the potential to change geographies of access to work. For example, greater availability of new digital technologies has enabled more people to perform work tasks remotely from different geographical locations.

Legal advice for employers

Organisations like the CIPD and HSE also provide legal advice to employers about remote working, including health and safety implications.

The CIPD has provided advice for employers by compiling a list of ten legal issues they should consider when authorising remote working, including

[37] TUC, The future of flexible work, 18 June 2021

[38] IFOW, Remote working and Covid-19: what is work and what is personal, August 2020

health and safety law, the cost of working remotely (e.g. broadband and IT equipment) and data protection issues. [39]

Homeworking has potential health and safety implications. The Health and Safety Executive (HSE) highlights that employers have health and safety obligations towards home workers. [40] In particular, HSE guidance says if an employee is working from home on a long-term basis, employers will need to control the risks associated with display screen and other equipment.

Comparative European research by Eurofound covering experiences of teleworking across the EU concludes that:

- Expansion of telework in the EU during the pandemic has revealed a blurring of lines between work and private life. Governments and social partners should introduce 'right to disconnect' initiatives to prevent physical and emotional exhaustion.

- Social partners should include provisions to improve working conditions for teleworkers in any legal frameworks or agreements. This includes clarifying how employers can contribute to expenses linked to working from home, as well as commitment to equal pay and access to training for those working remotely. [41]

[39] CIPD, Getting the most from remote working, 13 July 2021

[40] HSE, Protect home workers

[41] Eurofound, Teleworking, 21 October 2021

3 Hybrid working

The previous section considered the rapid increase in homeworking in a context of the Coronavirus public health pandemic. This section outlines trends in and experiences of hybrid working, which looks set to be an increasingly common working pattern in workplaces in the future.

3.1 What is hybrid working?

Hybrid working is a combination of homeworking and working at the office/normal place of work, or other location. Lawyers from Lewis Silkin LLP explain that Hybrid working tends to encompass more flexibility in terms of when we work, as well as where we work and how we work. [42]

3.2 Trends in hybrid working

ONS future of homeworking/future working practices survey analysis for the period April-May 2021 indicated that while the number of workers both working from home and travelling to work has remained relatively stable, employees and employers anticipate increases in hybrid working after the pandemic. [43] Of people homeworking at the time of the survey, 85% expected to continue hybrid working in future.

This is also indicated in the CIPD report Embedding new ways of working: implications for the post-pandemic workplace, with widespread expectation among employers and employees of increased homeworking and hybrid arrangements in future: with 70% of employers saying they will expand or introduce working at home on a regular basis compared with 45% before the crisis. The CIPD survey found that, on average, employers estimated that before lockdown started, about 18% of their staff worked from home regularly (at least once a week) and 9% worked from home all the time. Looking ahead, employers expect these numbers to double to 36% and 18%, respectively. However, this data is from June-September 2020, and attitudes to homeworking/hybrid patterns could change over time. [44]

[42] Lewis Silkin LLP, Hybrid working: what are the pros and cons? 30 April 2021

[43] ONS, Business and individual attitudes towards the future of homeworking, UK: April to May 2021, 14 June 2021

[44] CIPD, Embedding new ways of working, September 2020

3.3 Experiences of hybrid working

This section outlines experiences of hybrid working from stakeholder policy and practitioner reports, as well as policy and practice recommendations.

Benefits and costs of hybrid working

Acas guidance on hybrid working cites some potential benefits of hybrid working for employers, including increased productivity, attracting, and retaining a more diverse workforce and improving employment relationships.[45]

In July 2021, the Work Foundation published a report with Newcastle University Business School which found that hybrid working enhanced workers' experience of autonomy, resulting in greater trust between employers and workers.[46]

Respondents to the Work Foundation survey observed that elements of in-person social interaction will likely be important to preserve organisational culture, induct new staff, maintain formal and informal communications, and allow management to better support employee wellbeing. Analysis in the report about the effects of increased hybrid working suggests some displacement of jobs and economic activity is anticipated. However, continuation of commuting to a shared workplace at least occasionally means workers will remain rooted in their local context to a greater extent than with exclusive remote working.

The Work Foundation report also identifies some costs of hybrid and remote working, including blurred boundaries between work and home life, which was reported to negatively affect mental health.

Policy and practice recommendations

The Acas guidance says employers should consult with staff and their representatives regarding hybrid working policy. It says employers should consider which roles can be done remotely and consider staff needs, including health and safety, reasonable adjustments, and caring responsibilities. The guidance says employers should adopt a hybrid working policy clearly outlining how hybrid working arrangements will work and appropriate standards. Employers will need to ensure that their flexible working policies are not discriminatory.[47]

[45] Acas, Considering hybrid working for your organisation, 13 July 2021

[46] Work Foundation, Hybrid and remote working in the North of England: Impact and future prospects, 2021

[47] Acas, Considering hybrid working for your organisation, 13 July 2021

Evidence from the report considers what employers and government can do to support a positive transition to hybrid work, including some recommendations by the Work Foundation:[48]

Recommendations for employers to support their employees:

- Help employees arrange their work-life balance by discussing working hours, communication, and technology use. If required, an organisational right-to-disconnect policy should be agreed with employees and trade union representatives.

- Consult with employees and trade union representatives on broader preferences for flexible work, considering not only flexibility in the place of work, but also how and when employees' work.

Recommendations for policymakers:

- The Work Foundation recommend that the Government's Flexible Working Taskforce should develop guidance for employers concerning their duty of care towards employees while they are working exclusively remotely, or in a hybrid pattern.

- The Taskforce should formulate proposals to amend legislation on flexible work, introducing a day-one right to request flexible work; narrowing the range of reasons employers can provide to deny or evade requests; and improving protections enabling workers to appeal decisions without fearing reprisal.

- Local Authorities could play an important role in providing co-working spaces for local businesses.

  The Involvement and Participation Association (IPA) emphasizes that 'collective and individual consultation with employees has never been so important' – in order to prevent workplace conflict over issues like hybrid working.[49] The IPA recommends that managers and HR professionals need to consider the following questions:

  - What are the needs and expectations of the organisation regarding individual employees?

  - What is the individual's situation regarding where they *need* to work and where they *can* work?

  - How will organisations measure individual productivity?

  - How will organisations monitor mental health?

[48] Work Foundation, Hybrid and remote working in the North of England: Impact and future prospects, 2021

[49] IPA, Hybrid Working-A Prelude to Conflict?

4 Flexible working: research on the pros and cons

4.1 Flexible working before the pandemic

This section provides a synthesis of academic research prior to the Covid-19 pandemic relating to flexibility at work, including analysis of the implications of homeworking and hybrid working.

In particular, academic research identifies potential tensions relating to experiences of flexibility at work, summarised below: [50] [51] [52] [53]

- Experiences of flexible working patterns like remote or hybrid working may produce a combination of pros and cons for employees. On one hand, flexible working may mean that employees experience greater autonomy and discretion over decisions about how to organise their working day, and enhanced job satisfaction, well-being, and work-life balance. On the other hand, however, employees who experience autonomy specifically linked to flexibility and working from home often work longer hours, experience work intensification, and difficulties in separating work and non-work boundaries. [54] Much depends on the type of flexible working policy, who makes the key decisions, and the specific context in which it is implemented.

- Flexibility at work may be a contested issue between employers and employees. This may be attributable to conflict of interest around competing concerns and choices when the interests of employers and employees clash. For example, employers and employees may have different expectations around requests for flexible working arrangements and issues like work-life balance.

In their review of workplace flexibility, Putnam et al (2014) note that research reveals tensions in how employees, managers and organizations develop and

[50] Rubery, J., Keizer, A., & Grimshaw, D., Flexibility bites back: the multiple and hidden costs of flexible employment policies, *Human Resource Management Journal*, *26*(3), 235-251, (2016)

[51] Putnam, L. L., Myers, K. K., & Gailliard, B. M., Examining the tensions in workplace flexibility and exploring options for new directions, *Human Relations*, *67*(4), 413-440, (2014)

[52] POST, The impact of remote and flexible working arrangements, 29 April 2021

[53] Wheatley, D., Employee satisfaction and use of flexible working arrangements, *Work, employment, and society*, *31*(4), 567-585, (2017)

[54] Kellleher, C. and Anderson, D., Doing more with less? Flexible working practices and the intensification of work, *Human Relations*, 63(1): 83-106

respond to flexibility initiatives. They identify three main tensions: (i) flexible versus fixed working arrangements; (ii) supportive versus unsupportive work climates (the extent to which management accommodate employee flexible working requirements), and (iii) equitable versus inequitable access to flexible working policies (whether they cover all employees or only some).

Putnam and colleagues link these tensions, and managing them, to a basic dilemma in implementing workplace flexibility: the autonomy (for employees) versus control (by management) paradox: possible conflict between managements' concern to control work activities versus employees' concerns about increasing discretion and autonomy over work tasks and work-life balance.[55]

To develop alternatives for handling such tensions, Putnam and colleagues recommend reframing them by: changing organisational cultures so that flexible working and work-life balance are explicitly valued; customising flexible work arrangements to adapt to changes in employees' work and life needs during their working lives; and making workplace flexibility a *right* for all employees (rather than a privileged few) and a routine feature of mutually agreed working arrangements between employers and employees.

Potential for mutual gains?

The capacity to balance these tensions around flexible working largely depends on the extent to which employers accommodate employee interests and different workplace perspectives. There is potential to achieve mutual gains for both parties if consensus can be reached.

However, research suggests that for mutual gains to occur requires greater scope for workplace rights providing stronger employee choice over flexible working than presently exist. For example, Wood suggests that, in the organisations that he studied, flexibility was 'one-sided' and weighted in favour of management controlled flexible scheduling of working patterns. [56]

In a report for the CIPD on Power Dynamics in Work and Employment Relationships, Dundon et al observe that capacity for mutual gains is presently constrained by imbalances of power, voice and influence at work. Employers control most decisions about issues like flexible working. This affects the distribution of benefits. They conclude that there is a requirement for employers, the HR profession, and the state and its agencies, to support greater capacity for employee influence and voice over workplace decisions.[57] Dundon and colleagues have built a body of research showing that employee

[55] Putnam, L. L., Myers, K. K., & Gailliard, B. M., Examining the tensions in workplace flexibility and exploring options for new directions, *Human Relations*, *67*(4), 413-440, (2014)

[56] Wood, A.J., Flexible scheduling, degradation of job quality and barriers to collective voice, *Human Relations*, *69*(10), 1989-2010, (2016)

[57] Dundon, T., Lucio, M. M., Howcroft, D., Hughes, E., Keizer, A., & Walden, R., Power dynamics in work and employment relationships: The capacity for employee influence, (2017)

voice and consulting employees and trade union representatives and seeking their agreement and consent is important for resolving tensions in employment relationships over issues like flexible working. [58]

4.2 Covid-19 – a game changer

The circumstances of the Covid-19 pandemic and the absence of choice due to Government-mandated work from home for many workers who could do so are likely to have shaped different experiences compared to pre-pandemic. With the coronavirus spreading rapidly in 2020, employers did not have time to prepare themselves and their employees for such a dramatic change in working patterns. Being forced to undertake the largest working from home experiment ever, employers had to ignore possible concerns about working culture, lack of infrastructure or issues related to managerial control or trust.

Research during the early phase of the pandemic illustrated that organisations with existing work from home experiences and values like consulting employees about flexible working coped better with the new circumstances than those which did not.[59]

According to Wheatley, effectively managing flexible working requires jobs to be redesigned so the focus is on outputs rather than inputs or specific timing of work. It is possible, Wheatley suggests, for working at home to be arranged to create mutual gains for both worker and employer. However, this has to be carefully managed to ensure that workers are available when needed, but also are able to achieve a separation and balance between home and work. This is necessary to avoid overwork and burnout among employees, and also to protect organisational interests, Wheatley concludes.[60]

4.3 Flexible working – a double-edged sword?

Academic research during the coronavirus pandemic reveals a mixture of benefits and costs of flexible working, depending on the specific context and circumstances of employers and employees.

[58] Dundon, T., Marchington, M., Wilkinson, A., Martinez Lucio, M., Howcroft, D., Donaghey, J., Cullinane, N., Dobbins, T., Hickland, E. and Carney, G., Who speaks for whom at work: worker voice and social dialogue, 2020

[59] Rofcanin, Y., & Anand, S., Human Relations virtual special issue: Flexible Work Practices and Work-Family Domain, *Human Relations*, *73*(8), 1182-1185, (2020)

[60] Wheatley, D, Managing flexible working post-pandemic, 3 March 2021

Benefits

Employee demand for remote and hybrid work

Research shows that there is substantial demand among employees for remote and hybrid working into the future, indicating that a large proportion of workers view it is an important benefit.

A survey of more than 3000 workers by Taylor and colleagues indicated that less than one in ten workers they surveyed wanted to return to the office full time.[61] The 'Covid-19 and Working from Home Survey', shows that 78% of respondents said they would prefer to work in the office for only two days or less. Almost a third (31%) said they would prefer not to spend any time at all in the office. However, the authors caution that a blanket approach is inappropriate because not everyone wants to work from home. Policies for hybrid working best practice should be negotiated with trade unions, the authors add.

According to Felstead and Reuschke, the pandemic has released latent demand for permanent flexible working patterns which is likely to persist into the future, including working from home and hybrid office-home working. They suggest that people have generally adapted well to working remotely from home, and concerns about detrimental effects on mental health have gradually decreased. [62]

Autonomy – a notable benefit

An increase in workers' autonomy and discretion to organise their working and private lives is the strongest and most frequently identified benefit in research on flexible working patterns like remote working. During the pandemic, many employees experienced greater autonomy and increased discretion over their working lives and were less likely to be subjected to direct managerial control and expectations of office presenteeism (being present at a place of work for more hours than is required, especially due to fears about job insecurity). This discretion includes where to work, when to work, when to take breaks, how to organise specific tasks. According to Wheatley, quoted in a BBC worklife article, autonomy is good for us and good for our work:

> If we have control over our lives and what we do during our lives, that gives us a greater sense of wellness, because we can decide what to do when and what works for us. It gives us mastery over our environment, and a feeling like we're not subject to others; we're the decision-maker. If you read the psychology literature, these things are fulfilling some of our core needs as human beings. [63]

[61] Taylor, P., Scholarios, D., and Howcroft, D., Covid-19 and Working from Home Survey', 24 March 2021

[62] Felstead, A and Reuschke, D, Homeworking in the UK: before and during the 2020 lockdown, WISERD Report, Cardiff: Wales Institute of Social and Economic Research, (2020)

[63] BBC, How to cope with less autonomy in the office, 23 August 2021

Employees with the greatest autonomy over work are most happy and satisfied with their jobs.

Autonomy is a basic human need, and Wheatley suggests that increasing employee discretion over working lives creates many positive outcomes. This is supported by research on autonomy based on data collected from 20,000 UK workers. [64] Wheatley and colleagues found that those employees with the greatest autonomy over work are most happy and satisfied with their jobs:

> [The autonomy] might be over how you do your job, what task you do first, how you go about completing a task... but could also be over the timing of work, when you start and finish or take breaks. It could also be over where you work – at home, a coffee shop, the office. Having autonomy over these things is clearly associated, with statistical evidence to support this, with greater degrees of job satisfaction.

Other benefits for workers

Wheatley also identifies other benefits from flexible working, including increases in productivity, job satisfaction, well-being, and work-life balance, negate commuting, and more inclusive working environments for employees with disabilities. Along with enabling fathers to spend more time with their children, thus altering existing gender norms around caring responsibilities, it can facilitate improved work-life balance for mothers. [65]

Productivity dividend for employers?

Felstead and Reuschke observe that a common concern among employers regarding remote working is that employees will avoid work without direct supervision and monitoring by management. This relates to worries about consequent falls in productivity. However, Felstead and Reuschke conclude that productivity has not been adversely affected by the shift towards homeworking. In fact, employees who did all of their paid work at home reported that they got more done per hour than before lockdown. Furthermore, according to Felstead and Reuschke, if those who want to continue working at home in the future are permitted to, productivity may be boosted by a sustained increase in the prevalence of homeworking as the strongest performers are most keen to continue to work at home. [66]

Furthermore, Forbes et al. conducted a survey of UK managers with the aim of understanding employers' perspectives on managing homeworking since the COVID-19 lockdown.[67] Overall, Forbes and colleagues' data indicates that managers have been pleasantly surprised about productivity and performance outcomes. Therefore, managers are keen to support more

[64] Wheatley, D, Autonomy in paid work and employee subjective well-being, *Work and Occupations*, *44*(3), 296-328, (2017)

[65] Fawcett Society, Coronavirus crossroads: equal pay day 2020 report, 20 November 2020

[66] Felstead, A and Reuschke, D, Homeworking in the UK: before and during the 2020 lockdown, WISERD Report, Cardiff: Wales Institute of Social and Economic Research, (2020)

[67] Forbes, S., Birkett, H., Evans, L., Chung, H. and Whiteman, J., Managing employees during the COVID-19 pandemic and the future of work, (2020)

working from home and flexible working in future and for their organisations to develop policies to facilitate this, Forbes and colleagues suggest.

Challenges and costs

Research has also identified challenges and costs, indicating that flexible working contains tensions and can be a potential double-edged sword if not managed appropriately. The main costs include possible intensification of work pressures, mental health concerns, unpaid overtime, and difficulties in separating and balancing work and life outside work.

Work pressures and other costs

Research evidence points to possible tensions regarding an 'autonomy paradox': the more autonomy workers have, the more effort and unpaid overtime they may do, the longer the hours spent working, and the greater blurring of boundaries between work and personal time. This autonomy paradox has been evident during the pandemic. For example, Hassard and Morris offer the concept of work 'extensification' to denote two main changes to work; the stretching of work hours, often previously occurring within the workplace but now taking place within the home, and the erosion of the work/home boundary as many people struggle with the issue of space within their homes, and question if they are working from home, or living at work. [68]

Wheatley identifies various challenges to successful adoption of remote working at home, including: difficulties in separating home and work (both space and time); professional (lack of visibility to management) and social isolation; lack of adequate resources and equipment/software; lack of effective health and safety including an ergonomic workspace (and potential shifting of resource costs from employer to employee); loss of benefits associated with informal knowledge sharing and idea development; and management concerns around misuse of company time leading to micromanagement and excessive monitoring.

Mental and physical health concerns were revealed by Taylor and colleagues in their survey research.[69] 40% of respondents said their mental health had deteriorated after working from home, while 37% reported that their physical health had suffered (including muscular-physical fatigue). The research found that 49% of homeworkers are more likely to work when sick, compared to those in the 'normal' workplace/office. Approximately one third of workers said their work from home workstations were unsuitable. Of those wanting some return to the normal workplace, 83% missed social interaction.

Forbes and colleagues observe that management participants in their research recognised that working remotely over long periods can entail

[68] Hassard, J. and Morris, J., The extensification of managerial work in the digital age: Middle managers, spatio-temporal boundaries and control, *Human Relations*, (2021)

[69] Taylor, P., Scholarios, D., and Howcroft, D., Covid-19 and Working from Home Survey', 24 March 2021

challenges, notably social isolation, and that some people prefer working in an office environment. Therefore, Forbes and colleagues make a number of best practice recommendations for organisations and policy-makers, intended to address any challenges arising, notably regarding hybrid working patterns. [70] [71] Recommendations include:

- Managers should communicate and consult with employees who have worked flexibly during Covid-19 to agree mutually beneficial flexible working patterns in future, including working methods and work location.
- Update flexible working and family friendly policies.
- Assess the impact of hybrid working on diversity, equality, and inclusion to prevent inequalities of treatment.
- Provide training for management on managing remote workers.
- Review performance measurement. Evidence suggests that moving from focusing on presenteeism at work (including virtual presenteeism) to focusing on results can enhance trust, loyalty, and employee well-being.
- Promote gender equality in flexible working.
- Examine any legal matters, such as health and safety.

Increased inequalities

Flexible working experts who contributed to the POST study (2021) have expressed concerns about how the effects of the pandemic have exacerbated pre-existing inequalities in access to employment, such as social class, education, age, gender, ethnicity, and place.[72] [73] [74]

Parents and carers have put in more hours and struggled with the pressures of home schooling and blurred home/work boundaries. In particular, the pandemic has intensified the unequal burden of care conducted by women, contributing to more women than men leaving the labour market. [75] [76]

For instance, Chung et al. conducted a survey of UK employees to assess how the Covid-19 pandemic, the lockdown and widespread working from home

[70] Forbes, S., Birkett, H., Evans, L., Chung, H. and Whiteman, J., Managing employees during the COVID-19 pandemic and the future of work, (2020)

[71] Birkett, H., Forbes, S., & Jackson, G, Hybrid Working Beyond COVID-19: Research findings and recommendations for implementing hybrid working. Retrieved from: www.birmingham.ac.uk/hybridworking-beyond-covid1, (2021)

[72] POST, The impact of remote and flexible working arrangements, 29 April 2021

[73] Blundell, R., Costa Dias, M., Joyce, R., & Xu, X, COVID-19 and Inequalities, *Fiscal studies*, *41*(2), 291-319, (2020)

[74] Mallett, O., Marks, A., & Skountridaki, L., Where does work belong anymore? The implications of intensive homebased working, *Gender in Management: An International Journal*, (2020)

[75] Anderson, D., & Kelliher, C, Enforced remote working and the work-life interface during lockdown. *Gender in Management: An International Journal*, (2020)

[76] Chung, H., Seo, H., Forbes, S. and Birkett, H, Working from home during the COVID-19 lockdown: Changing preferences and the future of work, (2020)

has influenced various work-life issues.[77] Chung et al. observe that many women have been carrying out the double or triple shifts of work/care/home-schooling throughout the lockdown. Without proper support, which includes involvement of fathers and well-resourced re-opening of schools and other child caring facilities, we may see a rise in women leaving the labour market. In sum, without targeted approaches to support women/mothers we may see an increase in the gender gap in labour market outcomes/pay, Chung et al warn.

Furthermore, Anderson and Kelliher explored enforced working from home in response to the Covid-19 pandemic and how it may differ from working from home through choice. They contend that women, and mothers in particular, have had little choice during lockdown in relation to when work has taken place, and how much work has been done. They call for a widespread review of childcare provision in supporting women and men in the labour market.

Various other challenges have been identified by research experts. Concerns have been expressed about health and safety, as well as data security and privacy in homeworking environments. Many younger workers have been less able to access suitable workspaces. Long-term increases in working from home may affect the property market and city centres. Transport ticketing options will need to respond to changes, and commuting costs could rise for some and fall for others. [78] [79] [80]

4.4 Known unknowns for future flexible working

Research identifies various known unknowns and undecided issues regarding futures of flexible working. These unknowns include the effects on health and well-being of new digital technologies and long-term homeworking. Neither is it possible to measure how many employees will experience flexible working patterns in future. The implications of increased homeworking for productivity are also not certain. [81]

Mallett et al suggest the real experimentation is still to come, observing that the arrangements that were rapidly improvised around coronavirus restrictions were not designed for a post-pandemic world of hybrid (or blended) working.[82] According to research by Mallett and colleagues on the

[77] Chung, H., Seo, H., Forbes, S. and Birkett, H. (2020). Working from home during the COVID-19 lockdown: Changing preferences and the future of work.

[78] POST, The impact of remote and flexible working arrangements, 29 April 2021

[79] POST, Life beyond COVID-19: What are experts concerned about? 30 September 2020

[80] Parry, J., Young, Z., Bevan, S., Veliziotis, M., Baruch, Y., Beigi, M., Bajorek, Z., Salter, E. and Tochia, C. Working from Home under COVID-19 lockdown: Transitions and tensions, Work after Lockdown, January 2021

[81] Quiggin, J., Have we just stumbled on the biggest productivity increase of the century? The Conversation, September 3 2020

[82] Mallett, O., Marks, A., Zschomier, D., Skountridaki, L., Why we need to hear more voices on what work should look like post-COVID. The Conversation, 3 June 2021

impact of homeworking, as organisations begin to envisage what the future of work might look like, concerns have been expressed about the potential creation of a two-tier workforce, with some denied access to flexible working. Moreover, they suggest that:

> what employers want to retain (increased productivity, decreased costs) and what employees want to retain (connecting with family and community, less commuting) may not always be compatible. [83]

Mallett et al conclude that public debate needs to move beyond abstract notions of flexibility and consider the future of work, not just for employers, but employees too.

The research above indicates that future benefits from flexible working are unlikely to be equally distributed and could increase inequalities if not regulated.

This connects back to research and policy debates about whether flexibility at work is too one-sided in power relations in favour of employer-oriented flexibility, and whether a policy push is required to move to a more employee-oriented trajectory in future. [84] This will be influenced by the nature of any future regulation/proposals for reform of flexible working, some of which are outlined next in Section 6.

[83] Mallett, O., Marks, A., Zschomier, D., Skountridaki, L., Why we need to hear more voices on what work should look like post-COVID. The Conversation, 3 June 2021

[84] Rubery, J., Keizer, A., & Grimshaw, D., Flexibility bites back: the multiple and hidden costs of flexible employment policies, *Human Resource Management Journal*, *26*(3), 235-251, (2016)

5 Calls for reform

Recently, there have been calls for legal and regulatory reform to implement stronger workers' rights regarding employee choices about flexible working.

Parliamentary Questions have been raised by opposition parties and non-affiliated members asking the Government what steps have been taken to introduce rights for flexible working and modernise flexible working legislation, as well as assessments of increased remote working on employee wellbeing.

In response the Government emphasised that their manifesto included a commitment to encourage flexible working and to consult on whether flexible working can be made the default unless employers have good reasons not to. They also outlined that the Flexible Working Taskforce will be developing best practice guidance for employers implementing remote or hybrid work patterns; including improving the work-life balance of remote workers. As indicated in Section 1.2, the Government also subsequently issued a consultation on such issues in September 2021.

Specific calls for reform outlined below include stronger legal rights for i) flexible working as a day one right for all employees, ii) a genuine default "right to have" flexible working, rather than just a right to request it, iii) a right to disconnect from work.

5.1 Flexible working as a day one right

As indicated in Section 1.2, the Government issued a consultation on flexible working in September 2021, including a proposal to make the right to request flexible working a day one right. [85] [86]

The Government consultation points to potential mutual gains of flexible working as a day one right (rather than after 26 weeks) for employers and employees:

> Flexible working can be particularly valuable for those who need to balance their personal lives with their working lives, including those with caring responsibilities. It can also bring benefits to employers – attracting more applicants and increasing productivity and motivation levels among staff.

[85] Government Consultation, Making Flexible Working the Default, September 2021
[86] BEIS, Open consultation overview: making flexible working the default, 23 September 2021

There have been long-standing calls by cross-party groups of politicians and other stakeholders for flexible working to be a legal right from day one of employment (rather than after 26 weeks as is currently the case).

The House of Commons Women and Equalities Select Committee published a report in February 2021: Unequal impact? Coronavirus and the gendered economic impact.[87] One of the recommendations was:

> We recommend the Government amend the Flexible Working Regulations 2014, to remove the 26-weeks' service threshold for employees to request flexible working arrangements. The pandemic has clearly demonstrated that it is unhelpful and unnecessary.

On 26 July 2021, the Labour Party announced policy plans to provide all workers with employment rights from day one, including a right to request flexible working. [88]

Other stakeholders with an interest in flexible working have made similar calls for a right to request it from day one. The Chartered Institute of Personnel and Development (CIPD) has called on organisations and government to make the right to request flexible working a day-one right. [89]

5.2 A default "right to have" flexible working

Under current legal provisions (and under new proposals in the Government consultation document), employees still have to request flexible working from their employer. The legislation states that an employer can only reject a request for specified business reasons (as listed in Section 1 of this briefing).

However, the right to request flexible working potentially still gives employers scope to deny requests, even if a right to request from day one is implemented. Stakeholders suggest that a "right to request" falls short of a genuine default "right to have" flexible working.

For example, the TUC has called for flexible working to be a right, not a request. [90] It refers to Labour Force Survey data indicating that 70% of employees had no form of flexible working in 2020. A 2019 TUC poll found that one in three flexible working requests are turned down by employers. [91] TUC General Secretary Frances O'Grady said workers should have a right to flexible working, rather than just the right to ask for it:

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[87] House of Commons Women and Equalities Committee, Unequal impact? Coronavirus and the gendered economic impact, 9 February 2021

[88] Labour Party, Labour unveils plans to make flexible working "a force for good" for all workers, 27 July 2021

[89] CIPD, Flex from 1st, February 2021

[90] TUC, TUC: government flexible working plans are "just tinkering around the edges", 22 September 2021

[91] TUC, One in three flexible working requests turned down, TUC poll reveals, 2 September 2019

> Under these plans employers will still have free rein to turn down all or any requests for flexible working. Instead of tinkering around the edges, ministers should change the law so that workers have the legal right to work flexibly from the first day in the job. The right to ask nicely is no right at all.

The Labour Party has called for stronger employee rights to flexible working and for "ending one-sided flexibility". [92] Angela Rayner, Labour Party deputy leader and shadow secretary of state for the future of work, is quoted as promising that: "Labour will give workers the right to flexible working – not just the right to request it – and give all workers full rights from day one on the job." [93]

On 30 June 2021, Labour MP Tulip Siddiq tabled a Private Members Bill with cross-party support (Co-sponsored by MPs from the Conservative, Labour, Lib Dem, Green, SDLP and SNP parties) (Flexible Working Bill):

> A Bill to give workers the right to flexible working from the first day of employment except in exceptional circumstances; to require employers to offer flexible working arrangements in employment contracts and advertise the available types of such flexibility in vacancy notices; and for connected purposes. [94]

The second reading of the Bill is due on 18 March 2022. As well as attracting cross-party support, Siddiq's Bill is supported by the Flex for All campaign, which includes the TUC, Pregnant Then Screwed, the Fawcett Society, Mother Pukka, Young Women's Trust, Gingerbread and The Fatherhood Institute, as well as the charity Working Families. [95]

However, in its consultation document issued in September 2021, the Government outlines its reasoning for suggesting that a default "right to have" flexible working is not "practical" or "sensible":

> Part of our thinking about how to make flexible working the default has included the potential to turn the current Right to Request into a "right to have", removing the ability of an employer to turn down a request. However, given the range of different roles and ways of working within them, the multiple forms of flexible working, the broad range of individual needs and the wide range of business models, even within sectors, we do not consider this achievable in a practical or sensible way.

Some academics note that a right to request versus a right to have flexible working relates to power-sharing, voice, and influence at work. [96] The

[92] Labour Party, Labour unveils plans to make flexible working "a force for good" for all workers, 27 July 2021

[93] The Guardian, UK staff to gain right to request flexible working from day one, 20 September 2021

[94] UK Parliament, Flexible Working Bill, 1 July 2021

[95] HR Magazine, New Bill could give employees the right to flexible work post-pandemic, 30 June 2021

[96] Dundon, T., Lucio, M. M., Howcroft, D., Hughes, E., Keizer, A., & Walden, R., Power dynamics in work and employment relationships: The capacity for employee influence, (2017)

balance of power in most individual employment relationships (between individual employees and their employers) tends to be weighted in favour of employers, potentially leaving many employees with limited voice, as noted by Bales et al., (2018).[97] This contributes to a perception – especially among some academic experts, the Labour Party, and stakeholders like the TUC – that flexibility at work is currently too 'one-sided' in power-sharing terms and requires rebalancing to enhance employee choices.

5.3 A right to disconnect from work

A right to disconnect relates to worker's rights to disengage from work and work-related communications, such as emails, during non-work hours.

In a report called 'Beyond Digital: Planning for a Hybrid World', a House of Lords Select Committee on Covid-19 called on the Government to consider a 'right to disconnect or switch off' to ameliorate people feeling (and being) constantly monitored at work, working longer hours, unable to switch off or maintain a separation between work and private lives.[98]

In its response to the report, the Government did not address the right to disconnect specifically, but noted that:

> We continue to work with employers via The Leadership Council and Disability Confident to promote toolkits available on The Mental Health at Work website and Every Mind Matters on protecting mental health when working from home, which includes best practice tips on staying connected to colleagues and ensuring regular breaks are taken from workstations. The Health and Safety Executive continues to promote health and safety guidance to employers in terms of home workers.[99]

There is currently no right to disconnect in the UK and it is not mentioned in the Government's consultation document on flexible working.

The Autonomy thinktank has devised a hypothetical legal right to disconnect to protect against hidden unpaid overtime (notably for women), involving amendments to the ERA 1996. [100]

Moreover, a report by the Work Foundation says that formalising arrangements to facilitate a healthy work-life balance through creating an organisational Right to Disconnect Policy is required to protect and enhance

[97] Bales, K., Bogg, A., and Novitz, T., *'Voice' and 'Choice' in Modern Working Practices: Problems with the Taylor Review*, *Industrial Law Journal*, 47(1), 46-75, (2018)

[98] House of Lords COVID-19 Committee, Beyond Digital: Planning for a Hybrid World, 21 April 2021

[99] House of Lords COVID-19 Committee, Beyond Digital: Planning for a Hybrid World, Appendix 2: Government response

[100] Autonomy, The Right to Disconnect, August 2021

employee wellbeing. [101] A core tension that many employers will face is balancing the seemingly inherent incompatibility of flexible work schedules and the right to log off. To address such tensions, internal policies should be developed through consultation with staff and worker representatives, the Work Foundation suggests. Indeed, in countries such as France, where there is already legislation on the right to disconnect, the details are ultimately agreed collectively at the organisational level in consultation with staff and worker representatives. More European examples are discussed in the next section.

Right to disconnect - European comparisons

A "right to disconnect" already exists in a number of EU countries. [102] [103] Although there is currently no specific right under EU law for those who work digitally to switch off outside working hours, a majority of the European Parliament voted in January 2021 to introduce the 'right to disconnect'. In April 2021, the Irish government published a Code of Practice granting all employees a right to disconnect. The voluntary Code includes three main clauses:

- The right of an employee to not have to routinely perform work outside their normal working hours.
- The right not to be penalised for refusing to attend to work matters outside of normal working hours.
- The duty to respect another person's right to disconnect (for example, by not routinely emailing or calling outside normal working hours).

Although the code is voluntary and not mandatory, workers who are asked to regularly work outside agreed hours will be able to refer the Code in proceedings before the Labour Court or Workplace Relations Commission (WRC). This new right forms part of the Irish Government's commitment to create more flexible family-friendly working arrangements, which also includes a consultation on legislating for workers to have the right to request remote working.

France is considered to be a pioneer in legally recognising this new right. Since 2017, employers with more than 50 workers have been obliged to draw up a charter of good conduct, negotiated in conjunction with union representatives, setting out the hours when staff are not supposed to send or answer emails. The right to leisure time is well protected in France, where employees also benefit from a shorter working week and longer holidays than

[101] Taylor, H,. Implementing an organisational right to disconnect policy: key considerations for employers. Work Foundation, 6 August 2021

[102] European Parliament, The right to disconnect, July 2020

[103] Taylor, H., The right to disconnect: What can the UK learn from Europe? Work Foundation, 30 April 2021

many of their continental neighbours. However, as the law doesn't specify what procedures employers must put in place to ensure a workers' right to disconnect, the level of protection is likely to differ widely from employer to employer. Additionally, employees at organisations with fewer than 50 employees cannot enforce the right to disconnect.

Most recently, in November 2021, the Portuguese parliament introduced a new labour law intended to protect the boundaries required for an adequate work-life balance for remote workers in Portugal. [104] The new law has attracted attention from around the world. Employers in Portugal will now face possible fines if they attempt to contact remote workers outside working hours. [105] This will now be illegal. Employers are also prohibited from monitoring employees who work at home. Employers will also have to help employees pay for expenses incurred by remote working, including energy and broadband bills. However, the new law will not affect firms with less than ten employees.

[104] Ana Catarina Mendes., We stopped Portugal's bosses contacting staff outside work hours. Here's why, The Guardian, 18 November 2021

[105] Portuguese law bans employers from contacting staff out of hours, Financial Times, 15 November 2021

Further reading

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Working from home: comparing the data
Blog | Released 17 May 2021
Comparisons of homeworking data sources

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